

**JUDICIAL COUNCIL OF CALIFORNIA**  
**ADMINISTRATIVE OFFICE OF THE COURTS**  
455 Golden Gate Avenue  
San Francisco, California 94102-3688

**Report**

TO: Members of the Judicial Council

FROM: Family and Juvenile Law Advisory Committee  
Hon. Jerilyn L. Borack and Hon. Susan D. Huguenor, Cochairs  
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DATE: October 6, 2008

SUBJECT: Juvenile Law: Confidentiality of Records (adopt Cal. Rules of Court, rule 5.553 and amend rule 5.552; adopt forms JV-569, JV-571, JV-572, JV-573, and JV-574; and revise form JV-570) (Action Required.)

Issue Statement

This proposal addresses two subjects pertaining to confidentiality of juvenile court records.

First, the Youth Law Center and Central California Legal Services have notified staff that rule 5.552(e) and the *Request for Disclosure of Juvenile Case File* (form JV-570) can be read to allow summary granting of a petition to review confidential juvenile court records without an individual determination of the best interest of the child as required by law.

Second, two recent bills amended the Welfare and Institutions Code<sup>1</sup> to increase access to confidential juvenile court records when a child has died. Senate Bill 39 (Migden; Stats. 2007, ch. 468), effective January 1, 2008, amended Welfare and Institutions Code section 827 and added sections 826.7 and 10850.4. The legislation was enacted to provide public access to juvenile case files in cases where a child fatality occurred. It also allows certain parties and entities to obtain copies of the juvenile case file. Additionally, Assembly Bill 2904 (Hayashi; Stats. 2008, ch. 255), effective January 1, 2009, added section 16502.5 to provide county boards of supervisors access to records of a deceased child in the custody of the juvenile court or any other involved county agency.

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<sup>1</sup> Unless otherwise stated, all further statutory references are to the Welfare and Institutions Code.

## Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2009:

1. Adopt rule 5.553 of the California Rules of Court to provide guidance regarding requests for disclosure of the juvenile case file of a deceased child;
2. Amend rule 5.552 of the California Rules of Court to conform to new statutory requirements and to clarify that, before granting a petition to disclose confidential juvenile court records, the court must make an individual determination of the best interest of the child;
3. Adopt form JV-569 to create a proof of service to help the court ensure that all those entitled to notice of a request for disclosure receive it;
4. Revise form JV-570 to allow its use when requesting the juvenile case file of a deceased child;
5. Adopt form JV-571 to provide a means to notice parties that a request for disclosure has been made and inform them of their right to object to disclosure;
6. Adopt form JV-572 to provide a uniform way to object to disclosure;
7. Adopt form JV-573 to separate the petition from the court's order denying the petition or setting a hearing which are both currently included on form JV-570;
8. Adopt form JV-574 to separate the court's order after judicial review from the petition itself, which are both currently included on form JV-570.

The text of amended rule 5.552 and proposed rule 5.553 is attached at pages 9–15; the proposed forms are attached at pages 16–25.

A copy of Welfare and Institutions Code sections 826.7, 827, 10850.4, and the recently enacted 16502.5 is attached for reference at pages 47–54.

## Rationale for Recommendation

### *Best Interest Determination*

The Youth Law Center and Central California Legal Services have notified staff that rule 5.552(e) and the *Request for Disclosure of Juvenile Case File* (form JV-570) can be read to allow summary granting of a petition to review confidential juvenile court records without an individual determination of the best interest of the child.

In determining whether to order disclosure of juvenile court records, a court must consider whether disclosure will be in the best interest of the child.<sup>2</sup> Current rule 5.552(b)(1) states the balancing test that the court must apply:

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<sup>2</sup> See *In re Keisha T.* (1995) 38 Cal.App.4th 220 (the juvenile court must determine whether disclosure is in the best interest of the child); *In re Tiffany G.* (1994) 29 Cal.App.4th 443 (the court must make the children's best interests its primary concern); *In re Maria V.* (1985) 167 Cal.App.3d 1099 (the juvenile court has exclusive authority to determine whether disclosure of juvenile records is in the best interest of the child).

- (E) In determining whether to authorize inspection or release of juvenile court records, in whole or in part, the court must balance the interests of the child and other parties to the juvenile court proceedings, the interests of the petitioner, and the interests of the public.
- (F) The court may permit disclosure of, discovery of, or access to juvenile court records or proceedings only insofar as is necessary, and only if there is a reasonable likelihood that the records in question will disclose information or evidence of substantial relevance to the pending litigation, investigation, or prosecution.

The Court of Appeal, Third Appellate District, expressly approved the rule as a proper balancing test.<sup>3</sup> The balancing test set forth in the rule requires the court to make an individual determination that takes into consideration the policy favoring confidentiality, the best interest of the child, and the interests of the petitioner and the public.

To ensure that the juvenile court protects the child and adequately considers all interests, appellate courts have approved or required procedures that include an in camera review of the record to determine whether the petitioner should be granted access to some or all of the records. The court must have as its primary concern the best interest of the child and weigh the competing interests, looking to the particular facts of each case. The court must recognize the general policy of confidentiality, consider whether disclosure is necessary, and determine whether the information sought can be obtained from another source or through partial disclosure. Procedurally, the petitioner must show good cause, the child must be given notice and an opportunity to be heard, and the juvenile court must make a record of its findings that is adequate for review of its ruling.<sup>4</sup>

Many appellate courts have required an in camera review of the record to determine whether some or all of the documents should be disclosed.<sup>5</sup>

The Court of Appeal, First Appellate District, has set forth guidelines to determine whether juvenile court records should be disclosed, including that the court make a

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<sup>3</sup> See *In re Keisha T.*, *Supra*, 38 Cal.App.4th at p. 220 (addressing former rule 1423, renumbered as 5.552).

<sup>4</sup> *Ibid.*

<sup>5</sup> See, e.g., *Pack v. Kings County Human Services Agency* (2001) 89 Cal.App.4th 821 (“In camera review was an appropriate procedure, and is routinely used when a judicial decision concerns information claimed to be covered by some rule of confidentiality or privilege.”); *Lorenza P. v. Superior Court* (1988) 197 Cal.App.3d 607. (“[T]he proper procedure is to petition the juvenile court to review the records in camera to determine which, if any, may be disclosed.”); *In re Gina S.* (2005) 133 Cal.App.4th 1074 (in camera review of court records conducted by trial court and review of record provided under seal).

finding that the need for discovery outweighs the policy considerations favoring confidentiality of juvenile records.<sup>6</sup>

Welfare and Institutions Code section 827 limits inspection of juvenile case files to specified individuals and “[a]ny other person who may be designated by court order of the judge of the juvenile court upon filing a petition.”

While rule 5.552(b)(1)(E)–(F) (stated above) describes the duties of the court, subdivision (e) provides: “The court must review the petition and grant or deny it summarily, or set a hearing,” and form JV-570 provides options to grant or deny the order, make additional orders, or set a hearing. The first sentence of (e) and the form suggest that an order granting inspection of records can be granted summarily, without an in camera review of the record and without ensuring that noticed parties have an opportunity to object before the court issues its order.

Given the importance of confidentiality and the impossibility of correcting any improper release once it has occurred, the committee recommends that the rule and forms make clear that the court may order release of records only after (1) the petitioner has carried its burden of showing that it is likely the records will disclose relevant information; (2) noticed individuals have had an opportunity to be heard; and (3) an in camera inspection of the records has taken place.

The committee recommends amending rule 5.552 to (1) require the petitioner to show that it is likely the records will disclose relevant information; (2) require notice of the petition for disclosure and of the right to file an objection; (3) delete the option that the court may grant the petition summarily; (4) require a finding that the need for discovery outweighs the policy considerations favoring confidentiality of juvenile records before any release of records; (5) increase the amount of time required to notice parties prior to the filing of the petition for disclosure from five to ten days; and (6) list individuals who may receive a copy of the case file under recent statutory amendments.

The committee recommends adopting two new forms, *Order on Request for Disclosure of Juvenile Case File* (form JV-573) and *Order After Judicial Review* (form JV-574), to separate the orders from the petition and from each other and to provide guidance to the court when making the order. Each potential order will incorporate the relevant legal standards to assist the court in making an order on the petition. For example, the order summarily denying a request would state: “The child is alive and the request is denied. The applicant has not shown good cause for the release of the requested records.”

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<sup>6</sup> *Navajo Express v. Superior Court* (1986) 186 Cal.App.3d 981.

The committee also recommends adopting a new form, *Notice of Request for Disclosure of Juvenile Case File* (form JV-571), to be served with a copy of the petition. This form would inform all those entitled to notice of the request seeking the child's case file and of their right to object to the release of the records. The committee further recommends adopting a new form, *Objection to Release of Juvenile Case File* (form JV-572), to allow those entitled to notice of the request to file an objection with the court. The committee also recommends adopting *Proof of Service–Request for Disclosure* (form JV-569) so that the court will know that all those required to receive notice did in fact receive it.

#### *Records of a deceased child*

Senate Bill 39 (Migden; Stats. 2007, ch. 468) amended section 827 and added sections 826.7 and 10850.4. The legislation was enacted to provide public access to a child's juvenile case file when a child fatality has occurred. The legislative intent was to promote public scrutiny of and an informed debate on the circumstances that led to the fatality, thereby promoting the development of child protection policies, procedures, practices, and strategies that reduce or avoid future deaths and injuries of children.

Section 10850.4 provides for an administrative release of certain documents without the filing of a legal petition and is outside the purview of this proposal. The amendments to section 827 impose time requirements that will expedite disposition when a request for records of a deceased child is made. Proposed new rule 5.553 would require the court to proceed under section 827(a)(2) when a request is made for records of a deceased child, and is consistent with the holding in *In re Elijah S.* (2005) 125 Cal.App.4th 1532.<sup>7</sup>

Assembly Bill 2904 (Hayashi; Stats. 2008, ch. 255) added section 16502.5 to provide county boards of supervisors access to records of a deceased child in the custody of the juvenile court or any other involved county agency. The legislative intent of this bill is to clarify that boards of supervisors may access otherwise confidential information when a child who has previously come to the attention of, or was in the protective custody of, the county welfare agency dies. AB 2904 was chaptered in August 2008 and is effective January 1, 2009. To implement this bill the committee proposes including a requirement in proposed new rule 5.553 that a court proceed under section 16502.5 when a request for records of a deceased child is made by a board of supervisors. While this portion of the proposed rule did not circulate for public comment, the committee believes this addition is non-controversial because it does not create a process for requesting these records, instead it simply requires the court to proceed under the new statute when a request for records is made by a board of supervisors. As circulated for comment, the rule would require a board of supervisors to request records under section 827(a)(2), but the recent

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<sup>7</sup> The Court of Appeal, First Appellate District held that the juvenile court has exclusive authority to order the release of the juvenile records of a deceased child, whether or not a petition to declare the child a dependent of the court has been filed. New rule 5.553 does not impose a requirement that a petition to declare a child a dependent of the court be filed. It requires the court to follow the process under section 827(a)(2) for a request of a deceased child's juvenile case file.

amendment to the law allows a board to request records under section 16502.5. The committee believes this addition to proposed rule 5.553 is necessary at this time to clarify that there are different processes for requesting records of a deceased child by members of the public and a board of supervisors.

The committee recommends revising *Request for Disclosure of Juvenile Case File* (form JV-570) to allow its use in requesting records of a deceased child.

The committee further recommends the rewriting and reformatting of form JV-570 as a plain language form. Many petitioners may not be familiar with the court process, and a plain language form will ease its use. The recommended new forms, *Notice of Request for Disclosure of Juvenile Case File* (JV-571) and *Objection to Release of Juvenile Case File* (JV-572), are also in plain language.

#### *Reorganization of and additional changes to rule 5.552*

In proposed rule 5.552, the strikeouts and apparent additions are largely a reorganization of existing rule language. Substantive changes include (1) the amendments mentioned in the discussions above; (2) the addition of the child's Indian tribe who has intervened in the case to the list of those who may inspect the juvenile case file;<sup>8</sup> (3) the addition of the child's Indian tribe to the list of those who must receive notice of the request for disclosure;<sup>9</sup> (4) the addition of the child's Court Appointed Special Advocate (CASA) to the list of those who must receive notice of the request;<sup>10</sup> and (5) changing "juvenile court records" to "juvenile case file" throughout the rule to be consistent with statute and the current definition in the rule. The remaining amendments organize the rule in a more logical and sequential way.

#### *Advisory Committee Comment*

The committee recommends deleting the 15-year-old advisory committee comment as it is no longer necessary to state the process by which the committee developed the rule.

#### Alternative Actions Considered

The committee considered taking no action; however, given the importance of confidentiality and the impossibility of correcting any improper release once it has occurred, the committee believes that the rules and the forms should clearly state that prior to the release of any records, there must be an individual determination including notice, the opportunity to object, and in camera review of the records. Further, while SB

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<sup>8</sup>Under section 224.4, a tribe has the right to intervene at any point in an Indian child custody proceeding. Under Code of Civil Procedure section 387, an intervention takes place when a third person is permitted to become a party to an action or proceeding. A tribe that has intervened is therefore a party. Under 25 U.S.C. section 1912(c) every party must have the right to examine the case file.

<sup>9</sup> Section 224.2(a) mandates that any notice sent in an Indian child custody proceeding must be sent to the child's tribe.

<sup>10</sup> Section 106 requires that the CASA must be notified of hearings and other proceedings concerning the case to which he or she has been appointed.

39 did not mandate the creation of rules or forms, the committee believes the legislative intent—to promote public scrutiny of and an informed debate on the circumstances that led to the fatality, thereby promoting the development of child protection policies, procedures, practices, and strategies that will reduce or avoid future deaths and injuries of children—is an important one and that forms should be created to give the public a simple process to request the juvenile case file.

#### Comments From Interested Parties

The invitation to comment on the proposal was circulated from April 21 to June 20, 2008, to the standard mailing list for family and juvenile law proposals as well as to the regular rules and forms mailing list. This distribution list includes judges, court administrators, social workers, probation officers, mediators, and other family and juvenile law professionals. A chart summarizing all the comments received and the committee's responses is attached at pages 26–46.

The committee received comments from a total of 20 commentators. Five commentators agreed with the proposal and four commentators did not agree. Eleven commentators agreed with the proposal if modified and suggested both technical and substantive changes. Of the four commentators who disagreed with the proposal, three were from the same large county and one was from the Trial Court Presiding Judges Advisory Committee/Court Executive Advisory Committee (TCPJAC/CEAC) Joint Working Group on Rules. These commentators disagreed with the proposed amendment to rule 5.552 requiring a hearing on every petition for disclosure. The committee has removed the hearing requirement from proposed rule 5.552. The amendments to the proposed rule require notice of the request for disclosure and of the right to object, and in addition to the current requirement in the rule that the court conduct an in camera review of the juvenile case file, a requirement that the court review any objections filed prior to ruling on the request. Courts that currently hold hearings when an objection is filed can still do so, however this is no longer a requirement in the proposed rule.

The TCPJAC/CEAC Joint Working Group also objected to the use of plain language forms because of their longer length. They believe that the plain language forms are unnecessary as these petitions are rarely filed by self-represented litigants. However, three commentators—one from a large county, one from a small county, and the sponsor of SB 39—all stated that these are often filed by self-represented litigants and applauded the use of the plain language format. The Family and Juvenile Law Advisory Committee recognizes the issues raised by longer length of plain language forms, the committee proposes the plain language format for these forms since many petitioners are self-represented litigants unfamiliar with the court process.

Several other commentators suggested minor substantive and grammatical changes, most of which were incorporated into the rules and forms.

### Implementation Requirements and Costs

This proposal will result in increased court and county costs because of the rule's notice requirements. Both an Indian child's tribal representative and CASA will now need to be noticed of any request for disclosure. The *Notice of Request for Disclosure of Juvenile Case File* (JV-571) and blank *Objection to Release of Juvenile Case File* (JV-572) are added forms that need to be served by the court. The proposal attempts to somewhat reduce the increased workload by deleting the requirement that the court serve the district attorney if the case comes under the provisions of section 300, and, if the case comes under the provisions of section 601 or 602, by deleting the requirement that the court serve the attorney for the child welfare agency, as these entities are not participating in the case.

It is yet to be seen how many requests will come before the court for the release of records of the juvenile case files of deceased children. SB 39 also provides for a release directly from the child welfare agency. In an attempt to reduce the number of requests that may come before the court, the *Request for Disclosure of Juvenile Case File* (form JV-570) includes a notice at the top informing potential petitioners that they may seek the records from the child welfare agency without a court order under section 10850.4.

Most courts currently provide notice and conduct an in camera review of the juvenile case file and any objections filed. Some hold noticed hearings when an objection is filed. The proposal will allow courts to continue to process 827 requests in the manner they are currently processing them unless there exists a blanket order for inspection. Many courts already process requests for juvenile case files of deceased children. The workload increase to judicial officers is therefore expected to be minimal. The new statutory provision allowing for requests directly to the child welfare agency will also add to the agency's workload. It remains to be seen how many of these requests will come before the counties.

Additionally, implementation of the revised forms will incur standard reproduction costs.

Attachments

Rule 5.552 of the California Rules of Court is amended and rule 5.553 is adopted, effective January 1, 2009, to read:

1 **Rule 5.552. Confidentiality of records (§§ 827, 828)**

2  
3 (a) \*\*\*

4  
5 (b) ~~Inspection~~ General provisions

6  
7 ~~(1) Only those persons specified in sections 827 and 828 may inspect, but~~  
8 ~~may not copy, juvenile court records without authorization from the~~  
9 ~~court.~~

10  
11 (1) The following individuals and entities may inspect, receive, and copy  
12 the juvenile case file without an order of the juvenile court:

13  
14 ~~(A) Counsel who are entitled to inspect juvenile court records include~~  
15 ~~any trial court or appellate attorney representing a party in the~~  
16 ~~juvenile court proceeding.~~

17  
18 (A) Court personnel;

19  
20 (B) The district attorney, a city attorney, or a city prosecutor  
21 authorized to prosecute criminal or juvenile cases under the law;

22  
23 (C) The child who is the subject of the proceeding;

24  
25 (D) The child's parents;

26  
27 (E) The child's guardians;

28  
29 (F) The attorneys for the parties, including any trial court or appellate  
30 attorney representing a party in the juvenile proceeding or related  
31 appellate proceeding;

32  
33 (G) Judges, referees, other hearing officers, probation officers, and  
34 law enforcement officers who are actively participating in  
35 criminal or juvenile proceedings involving the child;

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37 (H) The county counsel, city attorney, or any other attorney  
38 representing the petitioning agency in a dependency action;  
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- (I) Members of child protective agencies as defined in Penal Code section 11165.9; and
- (J) The California Department of Social Services in order to carry out its duty to oversee and monitor county child welfare agencies, children in foster care or receiving foster-care assistance, and out-of-state placements; and
- ~~(1)~~(2) The following individuals and entities may inspect the juvenile case file without a court order and may receive a copy of the juvenile case file pursuant to a court order:
  - (A) All persons and entities listed in Welfare and Institutions Code sections 827 and 828 who are not listed in (b)(1) above; and
  - (B) An Indian child’s tribal representative if the tribe has intervened in the child’s case.
- ~~(B)~~(3) Authorization for any other person or entity to inspect, obtain, or copy juvenile ~~court records~~ case files may be ordered only by the juvenile court presiding judge or a judicial officer of the juvenile court.
  - ~~(C) The child, the child’s attorney, the child’s parents and their attorneys, the child’s social worker, the county counsel, and a child’s identified Indian tribe, can obtain a copy of a juvenile case file document that was previously disseminated during the proceedings, while the case is pending.~~
- ~~D~~(4) Juvenile ~~court records~~ case files may not be obtained or inspected by civil or criminal subpoena.
  - ~~(E) In determining whether to authorize inspection or release of juvenile court records, in whole or in part, the court must balance the interests of the child and other parties to the juvenile court proceedings, the interests of the petitioner, and the interests of the public.~~
  - ~~(F) The court may permit disclosure of, discovery of, or access to juvenile court records or proceedings only insofar as is necessary, and only if there is a reasonable likelihood that the records in question will disclose information or evidence of substantial relevance to the pending litigation, investigation, or prosecution.~~

1           (G) ~~The court may issue protective orders to accompany authorized~~  
2           ~~disclosure, discovery, or access.~~

3  
4       (2)(5)       When a petition is sustained for any offense listed in section 676,  
5       the charging petition, the minutes of the proceeding, and the orders of  
6       adjudication and disposition that are contained in the ~~court~~ juvenile  
7       case file must be available for public inspection, unless the court has  
8       prohibited disclosure of those records under that section.

9  
10   (c)   \*\*\*

11  
12   (d)   **Notice of petition for disclosure**

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14   (1)   At least ~~five~~ 10 days before the petition is submitted to the court, the  
15   petitioner must personally or by first-class mail serve, ~~or attempt to~~  
16   ~~serve,~~ a copy of the petition *Request for Disclosure of Juvenile Case*  
17   *File* (form JV-570), *Notice of Request for Disclosure of Juvenile Case*  
18   *File* (form JV-571), and a blank copy of *Objection to Release of*  
19   *Juvenile Case File* (form JV-572) on the following:

20  
21   (A)   The county counsel, city attorney, or any other attorney  
22   representing the petitioning agency in a dependency action if the  
23   child's petition was filed under section 300;

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25   (B)   The district attorney if the child's petition was filed under section  
26   601 or 602;

27  
28   (C)   The child;

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30   (D)   The attorney of record for the child who remains a ward or  
31   dependent of the court;

32  
33   (E)   The parents ~~or guardian~~ of the child if:

34  
35       (i)   The child ~~who~~ is under 18 years of age ~~or if a dependency~~  
36       petition (§ 300 et seq.) was filed regarding the child ;or

37  
38       (ii)  The child's petition was filed under section 300;

39  
40   (F)   The guardians of the child if:

41  
42       (i)   The child is under 18 years of age; or  
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1                   (ii) The child’s petition was filed under section 300;

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3                   (G) The probation department or child welfare services program  
4                   agency, or both, if applicable;

5  
6                   (H) The Indian child’s tribe; and

7  
8                   (I) The child’s CASA volunteer.

9  
10                  (2) The petitioner must complete *Proof of Service–Request for Disclosure*  
11                  (Form JV-569) and file it with the court.

12  
13                  (3) If the petitioner does not know the identity or address of any of the  
14                  parties in (d)(1), above the clerk must:

15  
16                   (A) Serve personally or by first-class mail to the last known address a  
17                   copy of *Request for Disclosure of Juvenile Case File* (form JV-  
18                   570), *Notice of Request for Disclosure of Juvenile Case File*  
19                   (form JV-571), and a blank copy of *Objection to Release of*  
20                   *Juvenile Case File* (form JV-572) and;

21  
22                   (B) Complete *Proof of Service–Request for Disclosure* (Form JV-569)  
23                   and file it with the court.

24  
25                  (4) For good cause, the court may, on the motion of the person seeking the  
26                  order or on its own motion, shorten the time for service of the petition  
27                  for disclosure.

28  
29                  (e) **Procedure**

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31                  (1) The court must review the petition and, ~~grant or~~ if petitioner does not  
32                  show good cause, deny it summarily;

33  
34                  (2) ~~or~~ If petitioner shows good cause, the court may set a hearing. The  
35                  clerk must notice ~~all parties of~~ the hearing; to the persons and entities  
36                  listed in (d)(1) above.~~If at the hearing~~

37  
38                  (3) Whether or not the court holds a hearing, if the court determines that  
39                  there may be information or documents in the records sought to which  
40                  the petitioner may be entitled, ~~review of records must be in camera and~~  
41                  the juvenile court judicial officer must conduct an in camera review of  
42                  the juvenile case file and any objections and assume that all legal  
43                  claims of privilege are asserted.

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- (4) In determining whether to authorize inspection or release of juvenile case files, in whole or in part, the court must balance the interests of the child and other parties to the juvenile court proceedings, the interests of the petitioner, and the interests of the public.
- (5) If the court grants the petition, the court must find that the need for discovery outweighs the policy considerations favoring confidentiality of juvenile case files. The confidentiality of juvenile case files is intended to protect the privacy rights of the child.
- (6) The court may permit disclosure of juvenile case files only insofar as is necessary, and only if petitioner shows by a preponderance of the evidence that the records requested are necessary and have substantial relevance to the legitimate need of the petitioner.
- (7) If, after in-camera review and review of any objections, the court determines that all or a portion of the records juvenile case file may be disclosed, the court must make appropriate orders, specifying the information to be disclosed and the procedure for providing access to it.
- (8) The court may issue protective orders to accompany authorized disclosure, discovery, or access.

~~(f) — Case files of deceased dependent child~~

~~Case files pertaining to a deceased child who was within the jurisdiction of the juvenile court under section 300 must be released to the public by order of the court following procedures in (b) and (c) of this rule. If the court orders the release of case files pertaining to a deceased child, any information regarding the child or that could identify a child other than the deceased must be redacted from the case file before its release, absent a specific order to the contrary. The presiding judge of the juvenile court may prohibit or limit access to a juvenile court file of a deceased child if such a release would be detrimental to the safety, protection, or physical or mental well-being of another child who is directly or indirectly connected to the deceased child's case.~~

~~(g)–(i)(f)–(h) \*\*\*~~

**Advisory Committee Comment**

1 In 1990, the Judicial Council Advisory Committee on Juvenile Court Law assumed the  
2 responsibility for drafting a rule of court to address the issue of confidentiality of juvenile court  
3 records. The committee received requests from throughout the state for clarification of sections  
4 827 and 828. County counsel, district attorneys, and representatives of probation departments and  
5 child welfare services programs, as well as judicial officers, expressed a need for guidance in this  
6 area.

7  
8 Some counties have developed their own protocols for access to and release of records; others  
9 handle the issue on a case-by-case basis with no clear guidelines regarding definitions or  
10 procedures. The rules and forms subcommittee undertook a thorough analysis of the relevant  
11 statutes and cases interpreting them. As subcommittee members examined the procedures set up  
12 in different jurisdictions, and the complex issues presented, they agreed that the rule needed to  
13 define “juvenile court records.”

14  
15 Once the definition was established, the primary concern was recognition of both the purposes of  
16 confidentiality protections and the legitimate interests that certain agencies and individuals may  
17 have in seeking access to identified materials. Essential to the process were the notice  
18 requirements and the procedure for the court to follow in assessing the merits of a request for  
19 disclosure or release. In order to make these considerations as clear and structured as possible, the  
20 subcommittee recommended that a petition form also be prepared.

21  
22 Proposed rule 5.552 and proposed *Petition for Disclosure of Juvenile Court Records* (form JV-  
23 570) were drafted and circulated for comment. There were many responses, all of which were  
24 carefully considered by the committee as a whole, and several suggestions and amendments were  
25 incorporated. The comments universally welcomed the addition of the rule and the formalization  
26 of a procedure through the use of the form.

27  
28 The rule does not attempt to set forth a procedure for access to records protected under other  
29 statutes or to include documents or materials not specifically under the authority of the juvenile  
30 court. Thus, the files maintained by probation departments and child welfare services programs  
31 may be the subject of a JV 570 petition to disclose only if a section 300, 601, or 602 petition  
32 concerning the subject child has been filed in juvenile court at some time (before, after, or  
33 concurrent with the acquisition of the materials in the files). The protection of reports of  
34 suspected child abuse is recognized and specifically identified in (f) of the rule. (Reference to  
35 Pen. Code, § 11165 et seq.)

36  
37 Notice to the subject child that his or her records are being sought is fundamental, as is notice to  
38 the parents of a child who has not reached majority. Because dependency files contain many  
39 references to and details of family issues, notice to parents of children on whom section 300  
40 petitions were filed is also mandated. Because their records are most commonly the subjects of  
41 such requests, the probation department and child welfare services program were added to the list  
42 of persons and agencies requiring notice. Although some commentators questioned the  
43 requirement of notice to both the county counsel and the district attorney because there are  
44 frequent “cross-overs” of purposes of disclosure, it was felt that notice to both offices would  
45 assure the court that all those interested in the records would have an opportunity to respond to  
46 the petition.

47  
48 Because these are confidential records and the protection of the interest of the child is paramount,  
49 specific procedural safeguards are appropriate.

1  
2  
3  
4  
5  
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7  
8  
9  
10

**Rule 5.553. Juvenile case file of a deceased child**

When the juvenile case file of a deceased child is sought, the court must proceed as follows:

- (1) Under section 827(a)(2) if the request is made by a member of the public; or
- (2) Under section 16502.5 if the request is made by a county board of supervisors.



Clerk stamps date here when form is filed.

**DRAFT 4  
08/06/08 mc  
Not approved by the  
Judicial Council**

Fill in court name and street address:

**Superior Court of California, County of**

Fill in case number if known:

**Case Number:**

1 Your name: \_\_\_\_\_  
Relationship to child (if any): \_\_\_\_\_  
Street address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Telephone number: \_\_\_\_\_  
Lawyer (if any) (name, address, telephone numbers, and State Bar number): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 2  I was not able to provide notice of this petition to the following because I did not know their names or addresses. If this is a request for the case file of a living child, the clerk must serve a copy of the petition. If this is a request for the case file of a deceased child, the custodian of records must serve a copy of the petition.
- a.  County counsel or other attorney representing the child welfare agency if petition filed under section 300
  - b.  District attorney if petition filed under section 601 or 602
  - c.  Child
  - d.  Attorney of record for the child
  - e.  Child's parent
  - f.  Child's legal guardian
  - g.  Probation department if petition filed under section 601 or 602
  - h.  Child welfare agency/custodian of records if petition filed under section 300
  - i.  Child's identified Indian tribe
  - j.  Child's CASA volunteer

- 3  Copies of *Request for Disclosure of Juvenile Case File (JV-570)*, *Notice of Request for Disclosure of Juvenile Case File (JV-571)*, and a blank *Objection to Release of Juvenile Case File (JV-572)* have been placed in a sealed envelope with postage paid and deposited in the United States mail addressed to the following:
- a.  County counsel or other attorney representing the child welfare agency if petition filed under section 300 (name and address): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- Date mailed: \_\_\_\_\_ or  Personally served on (date): \_\_\_\_\_



Case Number:

Your name: \_\_\_\_\_

b.  District attorney if petition filed under section 601 or 602 (*name and address*): \_\_\_\_\_

Date mailed: \_\_\_\_\_ or  Personally served on (*date*): \_\_\_\_\_

c.  Child (*name and address*): \_\_\_\_\_

Date mailed: \_\_\_\_\_ or  Personally served on (*date*): \_\_\_\_\_

d.  Attorney of record for the child (*name and address*): \_\_\_\_\_

Date mailed: \_\_\_\_\_ or  Personally served on (*date*): \_\_\_\_\_

e.  Child's parent (*name and address*): \_\_\_\_\_

Date mailed: \_\_\_\_\_ or  Personally served on (*date*): \_\_\_\_\_

f.  Child's parent (*name and address*): \_\_\_\_\_

Date mailed: \_\_\_\_\_ or  Personally served on (*date*): \_\_\_\_\_

g.  Child's legal guardian (*name and address*): \_\_\_\_\_

Date mailed: \_\_\_\_\_ or  Personally served on (*date*): \_\_\_\_\_

h.  Probation department if petition filed under section 601 or 602 (*name and address*): \_\_\_\_\_

Date mailed: \_\_\_\_\_ or  Personally served on (*date*): \_\_\_\_\_



Case Number: \_\_\_\_\_

Your name: \_\_\_\_\_

i.  Child welfare agency/custodian of records if petition filed under section 300 (*name and address*):

\_\_\_\_\_

Date mailed: \_\_\_\_\_ or  Personally served on (*date*): \_\_\_\_\_

j.  The Indian child's tribal representative (*name and address*): \_\_\_\_\_

\_\_\_\_\_

Date mailed: \_\_\_\_\_ or  Personally served on (*date*): \_\_\_\_\_

k.  The child's CASA volunteer (*name and address*): \_\_\_\_\_

\_\_\_\_\_

Date mailed: \_\_\_\_\_ or  Personally served on (*date*): \_\_\_\_\_

4 I declare under penalty of perjury under the laws of the State of California that the information in this form is true and correct. This means that if I lie on this form, I am guilty of a crime.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Type or print your name*

\_\_\_\_\_  
*Sign your name*



If you are requesting a court order to obtain the juvenile case file of a child who is alive, fill out all items on this form, and file it with the court. You must also fill out and file Proof of Service—Request for Disclosure (form JV-569).

If you are a member of the public requesting the juvenile case file of a child who is deceased, you can:

a. Fill out items 1–4 and 7 on this form and file it with the court. You must then provide a copy of this form to the Custodian of Records of the county child welfare agency, who will then provide notice of this request.

**Or**

b. Do not complete the form and request the juvenile case file from the child welfare agency under Welfare and Institutions Code section 10850.4.

① Your name: \_\_\_\_\_  
 Relationship to child (if any): \_\_\_\_\_  
 Street address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Telephone number: \_\_\_\_\_  
 Lawyer (if any) (name, address, telephone numbers, and State Bar number): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

② Name of child (if known): \_\_\_\_\_

③ Child's date of birth (if known): \_\_\_\_\_

④ a.  A petition regarding the child in ② has been filed under  
 Welfare and Institutions Code section 300  
 Welfare and Institutions Code section 601  
 Welfare and Institutions Code section 602 **or**

b.  I believe the child in ② died as a result of abuse or neglect. Approximate date of death: \_\_\_\_\_  
 If you checked box b, you may skip items 5 and 6.

Clerk stamps date here when form is filed.

**DRAFT 25  
 10/08/08 mc  
 Not approved by the  
 Judicial Council**

Fill in court name and street address:

**Superior Court of California, County of**

Fill in case number if known:

**Case Number:**

**Note: You must provide a copy of this form to all interested parties if you know their names and addresses.**

Case Number: \_\_\_\_\_

Your name: \_\_\_\_\_

5 The records I want are: *(Describe in detail. Attach more pages if you need more space.)*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Continued on Attachment 5.

6 The reasons for this request are:  
a.  Civil court case pending in *(name of county)*: \_\_\_\_\_  
Case number: \_\_\_\_\_ Hearing date: \_\_\_\_\_  
b.  Criminal court case pending in *(name of county)*: \_\_\_\_\_  
Case number: \_\_\_\_\_ Hearing date: \_\_\_\_\_  
c.  Juvenile court case pending in *(name of county)*: \_\_\_\_\_  
Case number: \_\_\_\_\_ Hearing date: \_\_\_\_\_  
d.  Other *(specify)*: \_\_\_\_\_  
Case number: \_\_\_\_\_ Hearing date: \_\_\_\_\_

7 I need the records because: *(Describe in detail. Attach more pages if you need more space.)*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Continued on Attachment 7.

8 I declare under penalty of perjury under the laws of the State of California that the information in this form is true and correct. This means that if I lie on this form, I am guilty of a crime.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Type or print your name*

  
\_\_\_\_\_  
*Sign your name*

**RE: Release of Juvenile Case File and Right to File  
an Objection**

*You must provide notice to all those listed in item 2 on Proof of Service—  
Request for Disclosure (form JV-569).*

TO (names):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

① Child's name: \_\_\_\_\_

② Information relating to the child named in item ① is being sought by  
(name): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

③ The requested information is described in the attached *Request for  
Disclosure of Juvenile Case File* (form JV-570).

④ If you object to the disclosure of these records and information, you must fill out *Objection to Release of Records*  
(form JV-572) and return it to the court listed at the address above within 10 days of the date you received this  
notice.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Type or print your name*



\_\_\_\_\_  
*Sign your name*

*Clerk stamps date here when form is filed.*

**DRAFT 13  
08/07/08 mc  
Not approved by the  
Judicial Council**

*Fill in court name and street address:*

**Superior Court of California, County of**

*Fill in case number if known:*

**Case Number:**

**Warning: If you do not object, the court may release the child's case file.**







**The court finds and orders:**

- ①  The child is alive and the request is denied. The applicant has not shown good cause for the release of the requested records.
- ②  The child is alive and the court sets a hearing on the request. Applicant has shown good cause for release of the juvenile case file, but the court must balance the interests of the applicant, the child, other parties to the juvenile court proceedings, and the public. Clerk to send notice under rule 5.552 of the California Rules of Court.  
Date of hearing: \_\_\_\_\_  
Time of hearing: \_\_\_\_\_  
Location: \_\_\_\_\_
- ③  The child is alive and the court will conduct a review of the juvenile case file and any filed objections.
- ④  The child is deceased and the court sets a hearing on the request.  
Date of hearing: \_\_\_\_\_  
Time of hearing: \_\_\_\_\_  
Location: \_\_\_\_\_
- ⑤  The child is deceased and the court will conduct a review of the juvenile case file and any filed objections.

*Clerk stamps date here when form is filed.*

**DRAFT 16  
08/07/08 mc  
Not approved by  
the Judicial Council**

*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:**

Date: \_\_\_\_\_

▶ \_\_\_\_\_  
*Judge (or Judicial Officer)*



*Clerk stamps date here when form is filed.*

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 this need with the child's best interest. The court finds that the need 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.

**DRAFT 7  
09/05/08 mc  
Not approved by  
the Judicial Council**

*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 relating to another child or which 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)*

**SPR08-40****Juvenile Law: Confidentiality of Records (amend Cal. Rules of Court, rules 5.552; adopt rule 5.553; adopt forms JV-569, JV-571, JV-572, JV-573, and JV-574; and amend JV-570)**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Donna Burt Division Manager, Juvenile Division Superior Court of Riverside County	A	No narrative comments submitted.	No response required.
2.	California Association of Superior Court Investigators Heather Tackitt Mediator/Investigator Superior Court of Madera County	AM	I believe it is critical that family court mediators, custody evaluators, and probate court investigators (either employed by superior court or sub-contracted with the superior court) should be specifically listed in Section (b)-listed in (1) – either (A) – (K) – copies are crucial for mediators/investigators.	Court personnel can receive a copy of the case file, as provided in the statute. To the extent sub-contracted mediators, evaluators, and investigators are considered court personnel, they can receive a copy of the case file.
3.	Child Welfare Services Corey Kissel Program Specialist San Diego	AM	<p>Almost always an 827 hearing is set when a petitioner files for request of records via the JV 570.</p> <p>Adding of stipulation that the in camera review must first take place prior to judge denying hearing or not is an excellent revision/update. I have seen requests w/o this and they can become messy. The judge should see the records before deciding to release or grant hearing.</p> <p>Concern with multiple new forms being proposed but each seems to make sense just makes the process more cumbersome.</p>	<p>The committee has amended the rule so that only an in camera review and consideration of objections are required before the court can grant the petition. Courts that currently hold hearings when an objection is filed can continue to do so.</p> <p>No response required.</p> <p>The committee is aware that additional forms can create increased work for a petitioner, however, the committee believes the additional forms will ensure that adequate notice is given to all and provide guidance to petitioners, objectors, and judges throughout this process.</p>

**SPR08-40**

**Juvenile Law: Confidentiality of Records (amend Cal. Rules of Court, rules 5.552; adopt rule 5.553; adopt forms JV-569, JV-571, JV-572, JV-573, and JV-574; and amend JV-570)**

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

	Commentator	Position	Comment	Committee Response
			<p>Top of pg 4 where the recommendation is to amend rule 5.552 to require the petitioner to show that it is likely that the records will disclose relevant info; the petitioner will lack knowledge of what is in a child welfare service's file and what really to say on this question to give a thorough answer. Perhaps an instructional sheet would be helpful (similar to all the JV forms they added last year for psych meds that also had just an info sheet. It could be streamlined from "give me the whole record" (volumes and volumes) to "I'd like just the contacts".</p> <p>The inspection piece (5.552(b)(1)(B)) re: District Attorney's inspection and ramifications makes sense</p> <p>The list of who to notice (in rule 5.552(d); pg 9 of document and on forms JV-570 and JV-571 pgs 14 and 16 of document) needs to include that the Custodian of Records must have notice of the request as well as an opportunity to object. This would make the new forms correlate to what is already stated in WIC 827(a)(2)(D) and it is crucial that the Custodian of Records have notice to be able to get the record for the court's review. (on form, it's under item #6)</p> <p>Revision to 5.552(b)(2)(A); the proposed new (2)(A) is a wordy and confusing way to say that everyone in (b)(1) can have copies but anyone not listed in b1 can't.</p>	<p>While a checklist of potential items may be a good idea, the committee recommends against creating an instruction sheet. In a state-supervised, county-administered system such as California, different documents are called different things in different counties. It would be extremely difficult to know and list all the variations of what documents are called. If all such variations were listed, it would then not be a user-friendly document, defeating the purpose of an instruction sheet.</p> <p>No response required.</p> <p>The process for notice is contained in section 827(a)(2)(D) and is governed by proposed rule 5.553.</p> <p>The committee has amended the rule to clarify that those listed in the rule can receive a copy of the case file by court order.</p>

**SPR08-40**

**Juvenile Law: Confidentiality of Records (amend Cal. Rules of Court, rules 5.552; adopt rule 5.553; adopt forms JV-569, JV-571, JV-572, JV-573, and JV-574; and amend JV-570)**

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

	Commentator	Position	Comment	Committee Response
			<p>5.552(b)(4); the newly proposed (4) may want to add after case files cannot be obtained by civil or criminal subpoena that this means that an 827 would still be required.</p> <p>Also on proposed revisions to JV-570 (pg 13 of document) – under # 5 if the petitioner lists another court hearing that they are requesting documents for (a: civil, b: criminal, etc) it would be helpful to also have a section for the date of the next hearing so that it is known when they expect the records by. There have been issues with expedited requests that are not labeled as such and there is no way of knowing the next date and providing the release in a timely fashion without the petitioner telling us.</p>	<p>This is the current rule and the committee recommends keeping it as is.</p> <p>The committee has modified the form to include date of court hearing on the request for records.</p>
4.	Children’s Advocacy Institute Ed Howard, Counsel San Diego		<p>*CAI along with the National Center for Youth Law was a co-sponsor of SB 39 (Migden); the statute that in significant part is addressed by the proposed rules and forms.</p> <p>The person requesting the information may not know the name of the child. The public seeking to discover what happened in the case of a child death based, for example, on a news report, may not know the name of the child. “Approximate date of death” should suffice to narrow the scope of the request along with, perhaps, a space for the petitioner to list any facts known about the child’s death.</p>	<p>No response required.</p> <p>The committee has amended the form to read “Name of child, if known.” If petitioner states that the request is for records of a deceased child, petitioner can list approximate date of death.</p>

**SPR08-40****Juvenile Law: Confidentiality of Records (amend Cal. Rules of Court, rules 5.552; adopt rule 5.553; adopt forms JV-569, JV-571, JV-572, JV-573, and JV-574; and amend JV-570)**

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

	Commentator	Position	Comment	Committee Response
			<p>JV-570 asks for the relationship to the child and also asks for a detailed statement of reasons for requesting the file.</p> <p>Since there is no balancing, “reasons” are immaterial for the release of records where deceased children are concerned. This will also lead petitioners to try and fill in sections that have no legal applicability to their petition, frustrating the very reason for the form, which is to streamline and simplify the matter.</p> <p>JV 570. The person filling out the form is not told until section 7 that they may not have to take exhaustive measures to locate and notice all of the people listed in the section. And, the form in section 7 correctly notes that the petitioner need not serve all of the listed individuals, the form asks for addresses and date of mailing.</p> <p>Form JV-573. While the latter part of the form clearly deals with when a child is deceased, the outset of the form does not, nor does it clearly articulate that it applies to when a child is alive. This is important because the beginning of the form mentions the balancing of interests of individuals who are not children – something specifically forbidden by SB 39.</p> <p>Rule 5.552 is called “Confidentiality of Records,” implying that it applies to all records, whereas rule 5.553 deals specifically with deceased children. Again, this is because, while</p>	<p>The committee has amended the form to read “Relationship to child, if any.”</p> <p>The committee has amended the form to indicate that if petitioner is requesting the case file of a deceased child, he or she can skip the sections that request the reason for release and a description of the documents sought.</p> <p>The committee has switched the order of the proposed items so that the information that the clerk (living children) and custodian of records (deceased children) must serve a copy of the petition comes first. Also agree to delete spaces requesting addresses and date of mailing if petitioner does not know names or addresses.</p> <p>The committee has amended the form to indicate whether the child is alive or deceased in each item.</p> <p>The committee has amended the forms to indicate if requests or orders are being made for deceased or living children. Because rule 5.553 specifically addresses deceased children, it is clear that rule</p>

**SPR08-40**

**Juvenile Law: Confidentiality of Records (amend Cal. Rules of Court, rules 5.552; adopt rule 5.553; adopt forms JV-569, JV-571, JV-572, JV-573, and JV-574; and amend JV-570)**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>those provisions of the forms and rule dealing deceased children are so labeled, those dealing exclusively with children who have not perished are not.</p> <p>We strongly recommend that there be distinct guidance and forms for each kind of petition: forms for petitions when the child is still alive and forms for when the petition seeks information for when the child has died.</p> <p>The forms as well miss another opportunity to avoid confusion. As the discussion correctly observes, SB 39 enacted a new statute providing for the administrative release of certain, insightful kinds of documents, a process entirely outside the Welf. &amp; Inst. Code, § 827 process. To prevent petitions from being filed when the person or entity requesting the documents might be satisfied with the administrative disclosures, the forms or form instructions might want to inform the public about the existence of these alternative pathways. This has two benefits: (1) it may obviate petitions entirely; and (2) it will clarify for judges that the statute governing such release (Welf. &amp; Inst. Code, § 10850.4) is entirely distinct from the 827 process. If there is information provided about the administrative option, it cannot be phrased so as to imply that the administrative release is a pre-requisite to filing an 827 petition, since that is emphatically</p>	<p>5.552 addresses children who are alive.</p> <p>Multiple forms can lead to confusion about which to file when. As addressed in this comment chart, the commentator’s concerns can be addressed by clearly identifying the information requested and findings that need to be made within the body of one form. Staff generally tries to avoid proliferation of forms. Multiple forms will also increase expenses when CCMS is established.</p> <p>The committee has inserted instructions to inform the public about the possibility of obtaining records from the child welfare agency.</p>

**SPR08-40**

**Juvenile Law: Confidentiality of Records (amend Cal. Rules of Court, rules 5.552; adopt rule 5.553; adopt forms JV-569, JV-571, JV-572, JV-573, and JV-574; and amend JV-570)**

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

	Commentator	Position	Comment	Committee Response
			<p>not the law.</p> <p>JV-573. What is self-evident from the plain text and legislative history of SB 39 is that, when a child dies, the records should in the main be released. Yet, as a practical matter, the form (sections 5 and 6) turns this presumption and policy upside down. No judicial reasoning is required for an order denying that which the bill sought to disclose. Only a box must be checked. A form faithful to the letter and intent of the legislation should instead require judges to “show their work” when they act in a way <i>contrary to the presumption and contrary to the guiding principles</i> they set forth in the binding code.</p> <p>The discussion rightly insists that the form and rule be written in plain language, rightly concluding that the public are among those intended to seek out what happened to children trusted to the child welfare system.</p>	<p>The committee has added to the form language from section 827 that the request can be denied only upon a showing by a preponderance of evidence that release of the juvenile case file or any portion thereof 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 petition.</p> <p>No response required.</p>
5.	County Welfare Directors Association Diana Boyer, Senior Policy Analyst Sacramento	AM	<p><i>Rule 5.552(b)(1) The following individuals and entities may inspect and receive a copy of the case file without an order of the Juvenile Court:</i></p> <p>Does ‘inspect’ include over the phone provision of information? This question further applies to (2), (3), (4).</p>	<p>The committee recommends against allowing over-the-phone provision of information. This is not allowed under the statute. “Inspect” is commonly known to mean to “closely view”. If the Legislature had intended to allow telephonic provision of information, they would have stated so in revising the section.</p>

**SPR08-40**

**Juvenile Law: Confidentiality of Records (amend Cal. Rules of Court, rules 5.552; adopt rule 5.553; adopt forms JV-569, JV-571, JV-572, JV-573, and JV-574; and amend JV-570)**

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	Commentator	Position	Comment	Committee Response
			<p><i>(A) Court Personnel</i>            This term seems too broad and literally could include the maintenance workers in the court house. Should this be amended to “authorized court personnel”?</p> <p><i>(D) The child’s parents or guardians.</i>            If the child is a legal guardianship but parental rights have not been terminated, would the parents still have a legal right to be notified of possible release of confidential information? We presume that guardians are treated as parents and would have the right to review. Please clarify.</p> <p><i>(J) The child’s Indian tribal representative if the tribe has intervened in the child’s case.</i>            1. What if the child is a member of more than one tribe? Will Family Code 170(d)(2) regarding designation of one tribe (that the child has the most contact with) apply, and if so, should citation to Family Code be noted?</p>	<p>Section 827 has been amended many times to expand the list of those entitled to inspect juvenile case file, The committee at this time recommends against narrowing the scope of those the Legislature has decided are entitled to copies of the case file. The committee will discuss this issue again at a future meeting.</p> <p>The committee has amended the rule to list parents and guardians separately so it is clear that both parents and guardians may receive a copy of the case file.</p> <p>After further discussion, the committee has removed the child’s tribal representative from the list of those who may receive a copy of the case file. Under section 224.4, the tribe has the right to intervene at any point in an Indian child custody proceeding. Under Code of Civil Procedure section 387, an intervention takes place when a third person is permitted to become a party to an action or proceeding. A tribe that has intervened in a case is, therefore, a party. While it makes sense that each party should receive a copy of the juvenile case file, section 827 does not state that each party may receive a copy of the case file. Section 827 lists parties separately and does not include a tribe that has intervened. At this time, the committee does not want to add individuals to the rule who are not explicitly allowed copies</p>

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		<p>2. In addition does the same requirement set forth in Family Code 180(b)(3) apply in cases of noticing regarding release of confidential information to all tribes until court determination and if so, should the citation be noted?</p> <p>3. Does the same requirement set forth in Family Code 180(b)(4) apply?  <i>If the identity or location of the Indian child's tribe is known, a copy of the notice shall also be sent directly to the Secretary of the Interior unless the Secretary of the Interior has waived that notice in writing and the person responsible for giving notice under this section has filed proof of the waiver with the court.</i></p> <p>This same question applies to (d)(1)(G).</p> <p><u>Revision of JV-570:</u>            Page 2 #6: Spell out the form names the first time they are cited within the JV-570.</p> <p><u>Adopt JV-571:</u>            Page 1: Spell out the form names the first time they are cited within the JV-571.</p> <p><u>Adopt JV-572:</u>            1. Spell out the form names the first time they are cited.</p>	<p>under section 827. This will be discussed again at a future committee meeting.</p> <p>The committee recommends against making a reference to the Family Code in the rule. Notice regarding the confidentiality of information is set forth in Welf. &amp; Inst. Code, § 224.2(a)(5)(G)(6).</p> <p>The committee recommends against making a reference to the Family Code in the rule. Notice to the Secretary of the Interior is set forth in Welf. &amp; Inst. Code, § 224.2(a)(4).</p> <p>The committee has inserted the form name before the form number.</p> <p>The committee has inserted the form name before the form number.</p> <p>The committee has inserted the form name before the form number.</p>

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	Commentator	Position	Comment	Committee Response
			<p>2. Since there appears to be a lot of white space on this form, #3 can be expanded out to allow the person filling the form out more room to expand their answer.</p> <p><u>Adopt JV-572:</u> Expand page 1 #6 to provide more room for court comments since there is a lot of white space on page 2.</p>	<p>The committee has amended the form to provide more space for an answer.</p> <p>The committee has amended the form to provide more space for an answer.</p>
6.	Petrina Fennell Probation Officer Humboldt County	A	<p>As a previous Juvenile Deputy Clerk of the Court and now a probation officer, I applaud the changes for the 827 WIC petition. There were many times these petitions were submitted to the Court and were not complete or not noticed properly. I think these proposals assist in stream lining this process in Court. I think the way all the new judicial council forms are presented are easier for the "regular" individual to complete and submit to the Court. This makes a clerk's job much easier and alleviates a lot of the questions from the general public and even attorneys.</p>	No response required.
7.	David Hood Legal Research Attorney Superior Court of Orange County		<p>1. <u>5.552(b)(2)</u> - It should be made clear in the language of proposed 5.552(b)(2) that individuals and entities listed in 827 but not in 5.552(b)(1) <u>can</u> obtain copies of case file records, but only pursuant to court order. The way proposed 5.552(b)(2) reads seems to indicate that such individuals and entities <u>cannot</u> obtain copies of case file records under any circumstances.</p>	The committee has amended rule 5.552(b)(2) to clarify that those listed in the rule can receive a copy of the case file by court order.

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			<p><u>5.552(d)(1)</u> - The service provision was already onerous, and the proposal adds to this burden. The addition of the child’s Indian Tribe and CASA volunteer is unnecessary because the attorney of record for the child must be noticed, and that attorney already has a duty to review the petition and object if necessary. The addition of these other parties will simply cause more delays, because in most cases they will not have been served by the petitioner and therefore will have to be served by the court.</p> <p>Instead of adding to the service burden, I suggest that the burden be lightened. I suggest that the Rule be changed to state that the D.A. need only be served if delinquency records are being sought, and that County Counsel only be served if dependency records are being sought. Also, the requirement that three separate forms be served practically guarantees that the court will have to provide service in most cases, because many of the petitioners are pro-per and will invariably not serve all of the required forms, even if they serve all of the required parties.</p> <p><u>5.552(e)</u> - This proposed subsection seems to indicate that a hearing <u>must</u> be set if a petitioner has shown good cause. This is unnecessary. Once the court has conducted an in camera review, the court should be able to proceed without a hearing in most cases, especially in</p>	<p>The committee recommends maintaining the proposed requirement that the child’s Indian tribe and CASA volunteer receive notice of any request for disclosure of the child’s record. Under Welf. &amp; Inst. Code, § 224.2(a), the child’s tribe must receive any notice sent in an Indian child custody proceeding. The committee believes this should include notice of a request for disclosure of the child’s file as well as notice of the opportunity for the tribe to object. Further, Welf. &amp; Inst. Code, § 106 requires that the CASA volunteer be notified of hearings and other proceedings concerning the case to which he or she has been appointed.</p> <p>The committee has amended the rule to require that notice need only be sent to the district attorney if it is a 601 or 602 case and only to the county counsel if it is a 300 case.</p> <p>The committee has amended the rule so that only an in camera review and consideration of objections are required before the court can grant the petition. Courts that currently hold hearings when an objection is filed can continue to do so.</p>

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			<p>those cases in which no objections have been filed. Holding a hearing on each petition would constitute a <u>massive</u> waste of judicial resources.</p> <p><u>5.552(f)(4)</u> - This Section is unnecessary and confusing. The court is already required to balance the various interests, and the juvenile court is mandated to take into account the best interests of the child. Stating that “the best interest of the child is paramount” is contrary to the importance given to the constitutional rights of criminal defendants in <i>Davis v. Alaska</i> (1974) 415 U.S. 308, 319 and <i>Foster v. Superior Court</i> (1980) 107 Cal. App. 3d 218, 229.</p> <p><b>Forms</b></p> <p><u>JV-570</u> - This form should include a space for the child's birthdate. Without this information it is very difficult to find the child's records.</p> <p><u>JV 571</u> - Section 5 states that a hearing is required. See above discussion under 5.552(e).</p> <p><u>JV 573</u> - Each order is too individualized to fit in a judicial council form. In practically every case, I have to fashion additional orders which set forth the specific orders as to the particular petition and list the documents to be produced. This proposed form impedes the court's ability to fashion orders tailored to</p>	<p>The committee has deleted the portion of the proposed rule that states “the best interest of the child is paramount.”</p> <p>The committee has included a space for the child's birthdate.</p> <p>The committee has amended the rule so that only an in camera review and consideration of objections are required before the court can grant the petition. Courts that currently hold hearings when an objection is filed can continue to do so.</p> <p>The committee has added a checkbox and “See attached” to the form to allow court flexibility in fashioning orders.</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			individual cases.	
8.	Cheryl Kanatzar Deputy Executive Officer Superior Court of Ventura County	AM	<p>1. It should be added that those individuals inquiring about a confidential juvenile case from the DA, City Attorney, etc. should be actively participating on a case, which involves the minor. Not just anyone from those agencies should have access to the juvenile cases.</p> <p>2. Also on JV572 - objection to release of information - it should indicate what the person's relationship to the child is.</p>	<p>While the committee sees the merit of amending the rule to indicate that only a district attorney or city attorney who is actively participating in the case of the child may inspect and receive a copy of the case file, section 827 does not state such a limitation and therefore the committee does not want to limit applicability beyond what is explicitly allowed under section 827..</p> <p>The committee has added an item asking what the relationship to the child is.</p>
9.	Los Angeles County Alternate Public Defender Janice Fukai Alternate Public Defender	N	<p>*The proposed rule would require that a hearing be held prior to granting a petition for disclosure of confidential information. This is unnecessary, time consuming, and a waste of judicial resources.</p> <p>The current balancing test correctly weighs the competing interests. The proposed provision that the best interests of the child is "paramount" should be deleted. Presently section 827 places the responsibility on the juvenile court judge to balance the competing needs of the child and the petitioner after appropriate notice and due process have been afforded.</p> <p>The proposed rule seeks to disallow section 827 petitioners from receiving copies of court records they have been granted access to inspect. If petitioner is seeking access to defend either a child in delinquency court or a criminal</p>	<p>The committee has amended the rule so that only an in camera review and consideration of objections are required before the court can grant the petition. Courts that currently hold hearings when an objection is filed can continue to do so.</p> <p>The committee has deleted the portion of proposed rule that states "the best interest of the child is paramount."</p> <p>The committee has amended the rule to clarify that those listed in the rule can receive a copy of the case file by court order. Disallowing copies was not intended by the committee.</p>

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			<p>defendant, due process requires that the party have the ability to make copies of the documents in order to use them for impeachment, refreshing recollection, or for rebutting allegations of recent fabrication.</p> <p>No objection with respect to deceased children.</p> <p>No objection to adding Indian tribal representatives as persons who are entitled to access if the tribe intervenes.</p>	<p>No response required.</p> <p>See response above to Commentator 5 on pages 32-33 of this comment chart.</p>
10.	Hon. Michael Nash Presiding Judge of the Juvenile Court Superior Court of Los Angeles County	N	Deleting the option of summarily granting an 827 petition will overwhelmingly increase the workload of the courts. 99% of the requests do not necessitate a hearing. In Los Angeles, we receive hundreds, if not thousands, of requests each year.	The committee has amended the rule so that only an in camera review and consideration of objections are required before the court can grant the petition. Courts that currently hold hearings when an objection is filed can continue to do so.
11.	Orange County Bar Association Cathrine Castaldi, President Newport Beach	AM	<p>The provision permitting the court to summarily grant a petition upon showing of good cause in favor of a noticed hearing should not be deleted.</p> <p>Notice to the district attorney could violate attorney work product where criminal defense counsel seeks discovery of juvenile records of a potential witness in a criminal trial. As with Pitchess motions, sometimes privileged information is proffered to the court by way of sealed declaration. The same scenario is common here. A provision for such sealed showings should be set forth.</p>	<p>The committee has amended the rule so that only an in camera review and consideration of objections are required before the court can grant the petition. Courts that currently hold hearings when an objection is filed can continue to do so.</p> <p>Notice to the district attorney is in the existing rule. Adding an additional provision allowing for a sealed declaration would need to go out for public comment before becoming part of the rule. The committee will consider this suggestion at a future meeting.</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
12.	James M. Owens Assistant County Counsel Office of the County Counsel, Dependency Division Monterey Park	AM	<p><b>*Rule 5.552(b)(1)(J)</b>  <b>Amend to read</b> The <u>Indian</u> child’s Indian tribal representative if the tribe has intervened in the child’s case. By adding the word “Indian” before the word “child’s”, it would make clear that the child has been determined to be an Indian child by the tribe and not merely alleged to be an Indian child by a parent or guardian.</p> <p><b>Rule 5.552(b)(2)(B)</b>            Amend to read: The <u>Indian</u> child’s Indian tribal representative if the tribe has not intervened in the child’s case. By adding the word “Indian” before the word “child’s”, it would make clear that the child has been determined to be an Indian child by the tribe and not merely alleged to be an Indian child by a parent or guardian.</p>	<p>See response above to Commentator 5 at pages 32-33 of this comment chart.</p> <p>The committee has amended the rule to state the “Indian child’s Indian tribal representative”. Additionally, the committee now proposes including in the list of those who can inspect a juvenile case file the tribal representative of a tribe that has intervened in a case, rather than a tribe that has not intervened as was circulated for comment. Under section 224.4, a tribe has the right to intervene at any point in an Indian child custody proceeding. Under Code of Civil Procedure section 387, an intervention takes place when a third person is permitted to become a party to an action or proceeding. A tribe that has intervened is therefore a party. Under 25 U.S.C. section 1912(c) every party must have the right to examine the case file. Therefore there is legal authority allowing a tribal representative, if the tribe has intervened, to inspect the case file. While a tribe that has not intervened may need to review the case file to determine if intervention is appropriate, at this time, the committee does not want to add individuals to the rule unless specifically authorized by statute. This issue will be discussed at a future committee meeting.</p>

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		<p><b>Rule 5.552(d)(1)(F)</b>            Currently reads: The probation department or child welfare “services program”, or both, if applicable. Amend to read: The probation department or child welfare “agency”, or both, if applicable.</p> <p><b>Rule 5.552(d)(1)(G)</b>            The child’s identified Indian tribe;            Amend to read: The <u>Indian</u> child’s identified Indian tribe. By adding the word “Indian” before the word “child’s” it would make clear that the child has been determined to be an Indian child by the tribe and not merely alleged to be an Indian child by a parent or guardian.</p> <p><b>Rule 5.552(f) Conduct of hearing</b>  <b>Amend to read: (6)</b> If after in-camera review the court determines that all or a portion of the case file may be disclosed, the court must make appropriate orders, specifying the information to be disclosed and the procedure for providing access to it <u>and provide a copy to the petitioner, the child welfare agency and the attorney representing the agency.</u></p> <p><b>Comment:</b> Both the petitioner and the agency which may be ordered to permit access (i.e. if the records are maintained by the child welfare agency) will be apprised of the information that is to be disclosed and the procedure for providing access to it. If the agency does not receive a copy of the order which specifies the information to be disclosed and the procedure for providing access to it, the agency may</p>	<p>The committee has changed “child welfare services program” to “child welfare agency” to maintain consistency with other rules.</p> <p>The committee has amended the rule to read “Indian child’s Indian tribal representative”. Under Welf. &amp; Inst. Code, § 224.2(a), the child’s tribe must receive any notice sent in an Indian child custody proceeding. The committee believes this should include notice of a request for disclosure of the child’s file as well as notice of the opportunity for the tribe to object.</p> <p>The committee recommends against requiring the court to provide a copy of the order to the petitioner, the agency, and the agency’s attorney. This is an increased workload on the court. The petitioner and agency attorney can easily obtain an order from the court clerk. Additionally, the petitioner can and should provide a copy of the order to the agency.</p>

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			<p>encounter difficulty in complying with the court’s order.</p> <p>Amend to read: <u>(7) The court may issue protective orders to accompany authorized disclosure, discovery, or access and, if order, shall provide a copy to the petitioner, the child welfare agency and the attorney representing the agency.”</u></p> <p><b>Comment:</b> By adding the words “and, if order, shall provide a copy to the petitioner, the child welfare agency and the attorney representing the agency” both the petitioner and those ordered to permit access (if the records are maintained by the child welfare agency) will be apprised of the information that is to be protected. Also, the numbering of the rule needs to renumbered.</p> <p><b>Form JV-570</b></p> <p>Add a box to select the option that a petition has not been filed in juvenile court, but the child has been brought to the attention of the Child Welfare Agency, as a basis for bringing a §827 petition.</p> <p><b>Comment:</b> Frequently, petitions pursuant to Welf. &amp; Inst. Code, § 827 are seeking access to juvenile case records that are maintained by the Child Welfare Agency even though a petition has not been filed in juvenile court. An example of such juvenile case records include those maintained by the agency under voluntary contracts with families, or referrals/investigations of suspected abuse or neglect. There should be a box on the form to so</p>	<p>The committee recommends against requiring the court to provide a copy of the order to the petitioner, the agency, and the agency’s attorney. This is an increased workload on the court. The petitioner and agency attorney can easily obtain an order from the court clerk. Additionally, the petitioner can and should provide a copy of the order to the agency.</p> <p>Section 827 addresses the confidentiality of and disclosure of “juvenile case files.” Section 827 defines juvenile case files as “a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer” Section 827 is specific. What triggers the disclosure is the filing of a petition. Section 827 does not address information in other files from before the filing of a petition; therefore, such records are not subject to disclosure under section 827.</p>

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			<p>indicate.</p> <p><b>Form JV-570. currently reads: (4)</b> The records I want access to are...</p> <p><b>amend to read: (4)</b> The records petitioner seeks access to are ...</p> <p><b>Form JV-570 Paragraph (7):</b> Indicates those</p>	<p>Additionally, the juvenile court only has the authority over records once a petition has been filed. While the court in <i>Elijah S.</i> (2005) 125 Cal. App.4th 1532 held that the juvenile court had the ability to order disclosure of a juvenile case file whether or not a petition has been filed, in that case the children were deceased. SB 39 now provides a process to request the records of a deceased child. There are practical concerns, as well. If a petition has not been filed, there will not be a court file or case number.</p> <p>The rule does not attempt to set forth a procedure for access to records protected under other statutes or to include documents or materials not specifically under the authority of the juvenile court. Thus, the files maintained by probation departments and child welfare agencies may be the subject of a JV-570 petition only if a section 300, 601, or 602 petition concerning the subject child has been filed in juvenile court at some time. The protection of reports of suspected child abuse is recognized and specifically identified in subsection (i) of the rule. (Reference to Penal Code section 11165 et seq.)</p> <p>The committee recommends keeping the plain language request: “The records I want are:” to maintain consistency among plain language forms.</p> <p>The committee has switched the order of the item numbers so that the information that the court will</p>

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			<p>whom the petitioner was unable to serve. Therefore the space for “date mailed” should be deleted as it is confusing.</p> <p><b>Form JV-570. currently reads: (8)</b> This means that if I lie on this form, I am guilty of a crime.  <b>amend to read: (8)</b> I am aware that it is a crime to intentionally include false information on this form.</p> <p><b>Form JV-571</b>            Currently reads: (5) Before the court can release your records, it must hold a hearing. You have the right to ...            Amend to read: (5) Before the court can release the records, it may hold a hearing. If you are the child identified in (1) above, you may have the right to ...</p> <p>Comment: If this notice is being sent to all persons/agencies that are being served with the JV-570, it would not make sense to have this paragraph read as it does. Also, when the paragraph reads “your records” and “you have the right” who is the “you” that is being referred to. If the form is referring the child’s records and indicating that the child has certain rights, then the form should state this more clearly.</p>	<p>serve if petitioner does not know the address comes first. Agree to delete the spaces for addresses and date mailed when petitioner was unable to serve because of not knowing the address.</p> <p>The committee recommends maintaining the phrase “This means that if I lie on this form, I am guilty of a crime” to explain signing under penalty of perjury. This will maintain consistency with other plain language forms.</p> <p>The committee has deleted this item from the form. The committee has amended the proposed rule so that only an in camera review and consideration of objections are required before the court can grant the petition. Courts that currently hold hearings can continue to do so under the practices set up in that court.</p> <p>The committee has made grammatical and structural changes so it is clear that anyone who receives the <i>Notice of Request for Disclosure of Juvenile Case File</i> (form JV-570) can fill out and file the <i>Objection to Release of Records</i> (form JV-572).</p>
13.	Jeffrey Rolston Court Services Supervisor Superior Court of San Mateo County	A	No narrative comments submitted.	No response required.

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14.	Superior Court of Fresno County Patty Wallace Rixman Director of Court Operations	AM	No narrative comments submitted.	No response required.
15.	Superior Court of Los Angeles County	N	Deleting the option of summarily granting an 827 petition will overwhelmingly increase the workload of the courts. Ninety-nine percent of the requests do not necessitate a hearing. In Los Angeles, we receive hundreds, if not, thousands of requests each year.	The committee has amended the rule so that only an in camera review and consideration of objections are required before the court can grant the petition.
16.	Superior Court of Sacramento County Robert Turner ASO II	A	No narrative comments submitted.	No response required.
17.	Superior Court of San Diego County Michael M. Roddy Executive Officer	AM	<p>*On form JV-572, it would be helpful to include spaces for the child’s date of birth; case number, if one exists; and objector’s full name, relationship to child, address and phone number.</p> <p>Deleting the option of the court granting a Welfare and Institution Code Section 827 Petition summarily without a hearing will significantly impact court hearings and the calendars. This will place an undue hardship on the courts if hearing must be held on disclosures where there is indisputable good cause to release the information.</p> <p>Commentator made various grammatical suggestions to the rules and forms.</p> <p>In rule 5.552(b)(1) list of those who may receive a copy of the case file, does court personnel mean superior court personnel or juvenile court personnel? Please clarify.</p>	<p>The committee has amended the form to contain the child’s date of birth; case number; and objector’s name, relationship to child, address, and phone number.</p> <p>The committee has amended the rule so that only an in camera review and consideration of objections are required before the court can grant the petition.</p> <p>The committee has modified text to improve grammar.</p> <p>Juvenile court personnel are superior court personnel. Section 827 states, “Court personnel” with no particular limitation. Section 827 has been amended many times to expand the list of those</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
				entitled to inspect juvenile case files. The committee will discuss this at a future meeting.
18.	Hon. Patrick E. Tondreau Presiding Judge of the Juvenile Court Superior Court of Santa Clara County	AM	I handle all of the 827 Petitions in Delinquency Court in Santa Clara County. We rarely have anyone oppose or ask for a hearing. I would recommend that 5.552(e) should read: "or if petitioner does show good cause and an objection is filed by any noticed party, set a hearing." Most of the Petitions filed show good cause for some disclosure. I do not think a hearing needs to be set unless requested. The rule as proposed would require many hearings and be an undue burden without accomplishing anything of substance. I do support the new proposed form OBJECTION TO RELEASE OF CASE FILE so we can be sure if anyone objects they can get a hearing.	The committee has amended the rule so that only an in camera review and consideration of objections are required before the court can grant the petition. Courts that currently hold hearings when an objection is filed can continue to do so.
19.	Trial Court Presiding Judges Advisory Committee/Court Executive Advisory Committee (TCPJAC/CEAC) Joint Working Group on Rules Patrick Danna Court Services Analyst San Francisco	N	The Trial Court Presiding Judges Advisory Committee (TCPJAC)/Court Executives Advisory Committee (CEAC) Joint Rules Working Group is concerned with the anticipated increase of notices of hearings and increased requests of juvenile records for criminal trials. The TCPJAC/CEAC Joint Rules Working Group indicated these rule changes could put a substantial burden on juvenile court judges and court staff workload.  The working group also wants to address the issue of the plain-language format and the length of the form to accommodate that format. The working group does not see the need for the plain language format in light of the fact that	The committee has amended the rule so that only an in camera review and consideration of objections are required before the court can grant the petition. Courts that currently hold hearings when an objection is filed can continue to do so.  The committee recommends maintaining the plain language format of these forms as these are often filled out by proper litigants. See comments from commentator numbers 4, 6, and 7 on this comment chart.

**SPR08-40****Juvenile Law: Confidentiality of Records (amend Cal. Rules of Court, rules 5.552; adopt rule 5.553; adopt forms JV-569, JV-571, JV-572, JV-573, and JV-574; and amend JV-570)**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			these forms are rarely filed by self-represented litigants.	
20.	Cynthia Wojan Juvenile Court Coordinator Superior Court of Solano County	A	*The JV-573 is confusing; everything is contained in one order. If a hearing is set, then upon conclusion of the matter, another order would need to be signed, and you could potentially have two JV-573 orders to each JV-570. It seems that the items contained in this order should be contained in two separate orders, one with prehearing orders/denial of request and/or setting a hearing, and a second order with Orders After Hearing on the JV-570, which could also contain the protective order, if necessary.	The committee has separated the forms so that one is an order setting a hearing or denying a request, and another is the order after hearing.



**§ 826.7. Child who died as result of abuse or neglect; release of juvenile case files**

Juvenile case files that pertain to a child who died as the result of abuse or neglect shall be released by the custodian of records of the county welfare department or agency to the public pursuant to Section 10850.4 or an order issued pursuant to paragraph (2) of subdivision (a) of Section 827.

**§ 827. Juvenile case file inspection; confidentiality; release; probation reports; destruction of records; liability**

(a)(1) Except as provided in Section 828, a case file may be inspected only by the following:

(A) Court personnel.

(B) The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.

(C) The minor who is the subject of the proceeding.

(D) The minor's parents or guardian.

(E) The attorneys for the parties, judges, referees, other hearing officers, probation officers, and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor.

(F) The county counsel, city attorney, or any other attorney representing the petitioning agency in a dependency action.

(G) The superintendent or designee of the school district where the minor is enrolled or attending school.

(H) Members of the child protective agencies as defined in Section 11165.9 of the Penal Code.

(I) The State Department of Social Services, to carry out its duties pursuant to Division 9 (commencing with Section 10000), and Part 5 (commencing with Section 7900) of Division 12, of the Family Code to oversee and monitor county child welfare agencies, children in foster care or receiving foster care assistance, and out-of-state placements, Section 10850.4, and paragraph (2).

(J) Authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate community care facilities, and to ensure that the standards of care and services provided in those facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facilities are subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 3 (commencing with Section 1500) and Chapter 3.4 (commencing with Section 1596.70) of Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Social Services in a criminal, civil,

or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names that are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and may not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Social Services may not contain the name of the minor.

(K) Members of children's multidisciplinary teams, persons, or agencies providing treatment or supervision of the minor.

(L) A judge, commissioner, or other hearing officer assigned to a family law case with issues concerning custody or visitation, or both, involving the minor, and the following persons, if actively participating in the family law case: a family court mediator assigned to a case involving the minor pursuant to Article 1 (commencing with Section 3160) of Chapter 11 of Part 2 of Division 8 of the Family Code, a court-appointed evaluator or a person conducting a court-connected child custody evaluation, investigation, or assessment pursuant to Section 3111 or 3118 of the Family Code, and counsel appointed for the minor in the family law case pursuant to Section 3150 of the Family Code. Prior to allowing counsel appointed for the minor in the family law case to inspect the file, the court clerk may require counsel to provide a certified copy of the court order appointing him or her as the minor's counsel.

(M) A court-appointed investigator who is actively participating in a guardianship case involving a minor pursuant to Part 2 (commencing with Section 1500) of Division 4 of the Probate Code and acting within the scope of his or her duties in that case.

(N) A local child support agency for the purpose of establishing paternity and establishing and enforcing child support orders.

(O) Juvenile justice commissions as established under Section 225. The confidentiality provisions of Section 10850 shall apply to a juvenile justice commission and its members.

(P) Any other person who may be designated by court order of the judge of the juvenile court upon filing a petition.

(2)(A) Notwithstanding any other law and subject to subparagraph (A) of paragraph (3), juvenile case files, except those relating to matters within the jurisdiction of the court pursuant to Section 601 or 602, that pertain to a deceased child who was within the jurisdiction of the juvenile court pursuant to Section 300, shall be released to the public pursuant to an order by the juvenile court after a petition has been filed and interested parties have been afforded an opportunity to file an objection. Any information relating to another child or which could identify another child, except for information about the deceased, shall be redacted from the juvenile case file prior to release, unless a specific order is made by the juvenile court to the contrary. Except as provided in this paragraph, the presiding judge of the juvenile court may issue an order prohibiting or limiting access to the juvenile case file, or any portion thereof, of a deceased child only upon a showing by a preponderance of evidence that release of the juvenile case file or any portion thereof 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 petition.

(B) This paragraph represents a presumption in favor of the release of documents when a

child is deceased unless the statutory reasons for confidentiality are shown to exist.

(C) If a child whose records are sought has died, and documents are sought pursuant to this paragraph, no weighing or balancing of the interests of those other than a child is permitted.

(D) A petition filed under this paragraph shall be served on interested parties by the petitioner, if the petitioner is in possession of their identity and address, and on the custodian of records. Upon receiving a petition, the custodian of records shall serve a copy of the request upon all interested parties that have not been served by the petitioner or on the interested parties served by the petitioner if the custodian of records possesses information, such as a more recent address, indicating that the service by the petitioner may have been ineffective.

(E) The custodian of records shall serve the petition within 10 calendar days of receipt. If any interested party, including the custodian of records, objects to the petition, the party shall file and serve the objection on the petitioning party no later than 15 calendar days of service of the petition.

(F) The petitioning party shall have 10 calendar days to file any reply. The juvenile court shall set the matter for hearing no more than 60 calendar days from the date the petition is served on the custodian of records. The court shall render its decision within 30 days of the hearing. The matter shall be decided solely upon the basis of the petition and supporting exhibits and declarations, if any, the objection and any supporting exhibits or declarations, if any, and the reply and any supporting declarations or exhibits thereto, and argument at hearing. The court may solely upon its own motion order the appearance of witnesses. If no objection is filed to the petition, the court shall review the petition and issue its decision within 10 calendar days of the final day for filing the objection. Any order of the court shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ.

(3) Access to juvenile case files pertaining to matters within the jurisdiction of the juvenile court pursuant to Section 300 shall be limited as follows:

(A) If a juvenile case file, or any portion thereof, is privileged or confidential pursuant to any other state law or federal law or regulation, the requirements of that state law or federal law or regulation prohibiting or limiting release of the juvenile case file or any portions thereof shall prevail. Unless a person is listed in subparagraphs (A) to (O), inclusive, of paragraph (1) and is entitled to access under the other state law or federal law or regulation without a court order, all those seeking access, pursuant to other authorization, to portions of, or information relating to the contents of, juvenile case files protected under another state law or federal law or regulation, shall petition the juvenile court. The juvenile court may only release the portion of, or information relating to the contents of, juvenile case files protected by another state law or federal law or regulation if disclosure is not detrimental to the safety, protection, or physical or emotional well-being of a child who is directly or indirectly connected to the juvenile case that is the subject of the petition. This paragraph shall not be construed to limit the ability of the juvenile court to carry out its duties in conducting juvenile court proceedings.

(B) Prior to the release of the juvenile case file or any portion thereof, the court shall afford due process, including a notice of and an opportunity to file an objection to the release of the record or report to all interested parties.

(4) A juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, may not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant

to this section. Further, a juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, may not be made as an attachment to any other documents without the prior approval of the presiding judge of the juvenile court, unless it is used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

(5) Individuals listed in subparagraphs (A), (B), (C), (D), (E), (F), (H), and (I) of paragraph (1) may also receive copies of the case file. In these circumstances, the requirements of paragraph (4) shall continue to apply to the information received.

(b)(1) While the Legislature reaffirms its belief that juvenile court records, in general, should be confidential, it is the intent of the Legislature in enacting this subdivision to provide for a limited exception to juvenile court record confidentiality to promote more effective communication among juvenile courts, family courts, law enforcement agencies, and schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the potential for drug use, violence, other forms of delinquency, and child abuse.

(2) 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. This notice shall be expeditiously transmitted by the district superintendent to the principal at the school of attendance. The principal shall expeditiously disseminate the information to those counselors directly supervising or reporting on the behavior or progress of the minor. In addition, the principal shall disseminate the information to any teacher or administrator directly supervising or reporting on the behavior or progress of the minor whom the principal believes needs the information to work with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability.

Any information received by a teacher, counselor, or administrator under this subdivision shall be received in confidence for the limited purpose of rehabilitating the minor and protecting students and staff, and shall not be further disseminated by the teacher, counselor, or administrator, except insofar as communication with the juvenile, his or her parents or guardians, law enforcement personnel, and the juvenile's probation officer is necessary to effectuate the juvenile's rehabilitation or to protect students and staff.

An intentional violation of the confidentiality provisions of this paragraph is a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).

(3) If a minor is removed from public school as a result of the court's finding described in subdivision (b), the superintendent shall maintain the information in a confidential file and shall defer transmittal of the information received from the court until the minor is returned to public school. If the minor is returned to a school district other than the one from which the minor came, the parole or probation officer having jurisdiction over the minor shall so notify the superintendent of the last district of attendance, who shall transmit the notice received from the court to the superintendent of the new district of attendance.

(c) Each probation report filed with the court concerning a minor whose record is subject to dissemination pursuant to subdivision (b) shall include on the face sheet the school at which the minor is currently enrolled. The county superintendent shall provide the court with a listing of all of the schools within each school district, within the county, along with

the name and mailing address of each district superintendent.

(d) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the instruction: "Unlawful Dissemination Of This Information Is A Misdemeanor." Any information received from the court shall be kept in a separate confidential file at the school of attendance and shall be transferred to the minor's subsequent schools of attendance and maintained until the minor graduates from high school, is released from juvenile court jurisdiction, or reaches the age of 18 years, whichever occurs first. After that time the confidential record shall be destroyed. At any time after the date by which a record required to be destroyed by this section should have been destroyed, the minor or his or her parent or guardian shall have the right to make a written request to the principal of the school that the minor's school records be reviewed to ensure that the record has been destroyed. Upon completion of any requested review and no later than 30 days after the request for the review was received, the principal or his or her designee shall respond in writing to the written request and either shall confirm that the record has been destroyed or, if the record has not been destroyed, shall explain why destruction has not yet occurred.

Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any person who transmits or fails to transmit any notice or information required under subdivision (b).

(e) For purposes of this section, a "juvenile case file" means a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer.

**§ 10850.4. Suspicion of child fatality caused by abuse or neglect; release of records**

(a) Within five business days of learning that a child fatality has occurred in the county and that there is a reasonable suspicion that the fatality was caused by abuse or neglect, the custodian of records for the county child welfare agency, upon request, shall release the following information:

(1) The age and gender of the child.

(2) The date of death.

(3) Whether the child was in foster care or in the home of his or her parent or guardian at the time of death.

(4) Whether an investigation is being conducted by a law enforcement agency or the county child welfare agency.

(b) All cases in which abuse or neglect leads to a child's death shall be subject to the disclosures required in subdivision (c). Abuse or neglect is determined to have led to a child's death if one or more of the following conditions are met:

(1) A county child protective services agency determines that the abuse or neglect was substantiated.

(2) A law enforcement investigation concludes that abuse or neglect occurred.

(3) A coroner or medical examiner concludes that the child who died had suffered abuse or neglect.

(c) Upon completion of the child abuse or neglect investigation into the child's death, as described in subdivision (b), the following documents from the juvenile case file shall be released by the custodian of records upon request, subject to the redactions set forth in subdivision (e):

(1) All of the information in subdivision (a).

(2) For cases in which the child's death occurred while living with a parent or guardian, all previous referrals of abuse or neglect of the deceased child while living with that parent or guardian shall be disclosed along with the following documents:

(A) The emergency response referral information form and the emergency response notice of referral disposition form completed by the county child welfare agency relating to the abuse or neglect that caused the death of the child.

(B) Any cross reports completed by the county child welfare agency to law enforcement relating to the deceased child.

(C) All risk and safety assessments completed by the county child welfare services agency relating to the deceased child.

(D) All health care records of the deceased child, excluding mental health records, related to the child's death and previous injuries reflective of a pattern of abuse or neglect.

(E) Copies of police reports about the person against whom the child abuse or neglect was substantiated.

(3) For cases in which the child's death occurred while the child was in foster care, the following documents in addition to those specified in paragraphs (1) and (2) generated while the child was living in the foster care placement that was the placement at the time of the child's death:

(A) Records pertaining to the foster parents' initial licensing and renewals and type of license or licenses held, if in the case file.

(B) All reported licensing violations, including notices of action, if in the case file.

(C) Records of the training completed by the foster parents, if in the case file.

(d) The documents listed in subdivision (c) shall be released to the public by the custodian of records within 10 business days of the request or the disposition of the investigation, whichever is later.

(e)(1) Prior to releasing any document pursuant to subdivision (c), the custodian of records shall redact the following information:

(A) The names, addresses, telephone numbers, ethnicity, religion, or any other identifying information of any person or institution, other than the county or the State Department of Social Services, that is mentioned in the documents listed in paragraphs (2) and (3) of subdivision (c).

(B) Any information that would, after consultation with the district attorney, jeopardize a criminal investigation or proceeding.

(C) Any information that is privileged, confidential, or not subject to disclosure pursuant to any other state or federal law.

(2)(A) The State Department of Social Services shall promulgate a regulation listing the laws described in subparagraph (C) of paragraph (1) and setting forth standards governing redactions.

(B) Notwithstanding the rulemaking provisions of the Administrative Procedures Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), until emergency regulations are filed with the Secretary of State, the State Department of Social Services may implement the changes made to Section 827 and this section at the 2007-08 Regular Session of the Legislature through all county letters or similar instructions from the director. The department shall adopt as emergency regulations, as necessary to implement those changes, no later than January 1, 2009.

(C) The adoption of regulations pursuant to this paragraph shall be deemed to be an emergency necessary for the immediate preservation of the public peace, health, safety, or general welfare. The emergency regulations authorized by this section shall be exempt from review by the Office of Administrative Law. The emergency regulations authorized by this section shall be submitted for filing with the Secretary of State and shall remain in effect for no more than 180 days, by which time the final regulations shall be adopted.

(f) Upon receiving a request for the documents listed in subdivision (c), the custodian of records shall notify and provide a copy of the request upon counsel for any child who is directly or indirectly connected to the juvenile case file. If counsel for a child, including the deceased child or any sibling of the deceased child, objects to the release of any part of the documents listed in paragraphs (2) and (3) of subdivision (c), they may petition the juvenile court for relief to prevent the release of any document or part of a document requested pursuant to paragraph (2) of subdivision (a) of Section 827.

(g) Documents from the juvenile case file, other than those listed in paragraphs (2) and (3) of subdivision (c), shall only be disclosed upon an order by the juvenile court pursuant to Section 827.

(h) Once documents pursuant to this section have been released by the custodian of records, the State Department of Social Services or the county welfare department or agency may comment on the case within the scope of the release.

(i) Information released by a custodian of records consistent with the requirements of this section does not require prior notice to any other individual.

(j) Each county welfare department or agency shall notify the State Department of Social Services of every child fatality that occurred within its jurisdiction that was the result of child abuse or neglect. Based on these notices and any other relevant information in the State Department of Social Services' possession, the department shall annually issue a report identifying the child fatalities and any systemic issues or patterns revealed by the notices and other relevant information. The State Department of Social Services, after consultation with interested stakeholders, shall provide instructions by an all county letter regarding the procedure for notification.

(k) For purposes of this section, the following definitions apply:

(1) "Child abuse or neglect" has the same meaning as defined in Section 11165.6 of the Penal Code.

(2) "Custodian of records," for the purposes of this section and paragraph (2) of subdivision (a) of Section 827, means the county welfare department or agency.

(3) "Juvenile case files" or "case files" include any juvenile court files, as defined in Rule 5.552 of the California Rules of Court, and any county child welfare department or agency or State Department of Social Services records regardless of whether they are maintained electronically or in paper form.

(4) "Substantiated" has the same meaning as defined in Section 11165.12 of the Penal Code.

(l) A person disclosing juvenile case file information as required by this section shall not be subject to suit in civil or criminal proceedings for complying with the requirements of this section.

(m) This section shall apply only to deaths that occur on or after January 1, 2008.

(n) Nothing in this section shall require a custodian of records to retain documents beyond any date otherwise required by law.

(o) Nothing in this section shall be construed as requiring a custodian of records to obtain documents not in the case file.

**§16502.5.** (effective 1/1/09)

(a) Notwithstanding any other provision of law, a county board of supervisors may receive and review any records in the custody of the juvenile court or any other involved county agencies relating to a child who has died and who had previously come to the attention of, or was under the supervision of, the county child welfare agency.

(b) The board may only receive and review the information in closed session. A board of supervisors in a county with a foster care population of more than 10,000 may take formal action to permit individual board members' offices to receive and review the information for the purpose of determining which cases should be brought to the attention of the full board in closed session. The information or records obtained shall be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights.

(c) The board or its members and staff may not disclose or release any information obtained pursuant to subdivision (a), unless otherwise permitted by state law, and shall be bound by all state and federal confidentiality laws.