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| Title | Delinquency Foster Care (amend Cal. Rules of Court, rules 1429.3 and 1496; adopt rules 1496.2 and 1496.3; revise form JV-625) |
| Summary | The proposed changes bring the delinquency rules and form into compliance with new California law (Assem. Bill 1696) and with federal law (42 U.S.C. 670 et seq.; 45 C.F.R. 1355–1357). |
| Source | Family and Juvenile Law Advisory Committee |
| Staff | Mara Bernstein, Juvenile Projects Attorney, 415-865-7728, mara.bernstein@jud.ca.gov |
| Discussion | Assembly Bill 1696, effective January 1, 2002, was clean up legislation intended to fix mistakes and omissions in Assembly Bill 575 (1999), and to further conform California delinquency law to the Adoption and Safe Families Act and related federal regulations (42 U.S.C. 670 et seq.; 45 C.F.R. 1355–1357 (2000)).<br><br>The proposed amendments to rules 1429.3 and 1496 conform the rules to the statutes by clarifying requirements and correcting statutory references. Rule 1496(b) has been expanded to include a detailed description of the permanency planning options for youth in foster care placements. These options are consistent with Welfare and Institutions Code section 727.3(b). Several other amendments to the rules, required by Assembly Bill 1696, will be presented to the Judicial Council for an effective date of July 1, 2002. Although rules 1429.3 and 1496 also serve the primary purpose of technical compliance with statutory changes, the changes they contain are lengthier and more substantive, so they are being sent out for comment in order to receive comments about the way in which the statutory requirements are incorporated into the rules.<br><br>Proposed rule 1496.2 describes the procedure for the appointment of a legal guardian in a delinquency case. This replaces rule 1429.3(c) and (d).<br><br>We are especially interested in public comment on the exclusive jurisdiction clause in subdivision (a) of proposed rule 1496.2. The committee believes that this provision is necessary, in order to prevent multiple courts from issuing conflicting orders regarding the same family, and to prevent families from “forum shopping”. Although Welfare and Institutions Code section 728 does not explicitly confer exclusive jurisidiction to the juvenile court for initial guardianship orders, it does do so for modification and termination of guardianship |

orders, just as Welfare and Institutions Code section 304 does for dependents. However, some concerns have been raised about granting the juvenile court exclusive jurisdiction that is not expressly authorized by statute for several reasons. First, the proposed rule seems to narrow the options available to the juvenile court and to families before the court. Some juvenile courts currently refer families to the probate courts to obtain guardianship. This option would no longer be available under the proposed rule. In addition, some families prefer probate or family court, because of the stigma associated with juvenile delinquency court or because issues of guardianship of the estate must be heard in the probate court.

Proposed rule 1496.3 prescribes the procedure for complying with the new Welfare and Institutions Code section 727.32 requirement that, when the child has spent 15 of the most recent 22 months in a foster care placement, the probation department must either follow statutory procedures for termination of parental rights of the child's parents or document a compelling reason for not doing so.

Judicial Council form JV-625, *Notice of Hearing—Juvenile Wardship Proceeding* would be amended to include check boxes for the child's appearance to be designated as either optional or mandatory. Amended, this form could be used for review and permanency hearings, and may be submitted to the court as proof of notice, as required by Welfare and Institutions Code section 727.4(a).

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The proposed amended rules, new rules, and amended form are attached at pages 3–14

Attachment

Rules 1429.3 and 1496 of the California Rules of Court are amended, Rules 1496.2 and 1496.3 are adopted, effective January 1, 2003, to read:

**Rule 1429.3. Orders after filing of petition under section 601 or 602**

**(a) [Restraining orders (§ 213.5)]** After a petition has been filed under section 601 or 602, and until the petition is dismissed or wardship is terminated, the court may issue restraining orders as provided in rule 1429.5. The restraining orders ~~shall~~ must be prepared on Judicial Council form *Restraining Order— Juvenile* (JV-250).

**(b) [Custody and visitation (§ 726.5)]** At any time while the child is a ward of the juvenile court or at the time wardship is terminated, the court may issue an order determining custody of, or visitation with, the child.

(1) *(Modification of existing court orders— new case filings)* The order of the juvenile court ~~shall~~ must be filed in an existing nullity, dissolution, legal separation, or paternity proceeding. If no custody proceeding is filed or is pending, the order may be used as the sole basis to open a file.

(2) *(Preparation and transmission of order)* The order ~~shall~~ must be prepared on Judicial Council form *Custody Order—Juvenile* (JV-200). The court may direct the social worker, parent, child's attorney, or clerk to:

(A) Prepare the order for the court's signature; and

(B) Transmit the order within 10 calendar days after the order is signed to the superior court of the county in which a custody proceeding has already been commenced or, if none, to the superior court of the county in which the parent who has been given custody resides. If the parent to whom custody has been given resides in another state or country, the order ~~shall~~ must be filed in the county of the juvenile court issuing the order.

(3) *(Procedures for filing order— receiving court)* Upon receipt of the juvenile court custody order, the superior court clerk of the receiving county ~~shall~~ must immediately file the juvenile court order in the existing proceeding, or ~~shall~~ must immediately open a file, without a filing fee, and assign a case number.

(4) *(Endorsed filed copy— clerk's certificate of mailing)* Within 15 court days after receiving the order, the clerk of the receiving court ~~shall~~ must send by first-class mail an endorsed filed copy of the order showing the case number of the receiving court to (i) the persons whose names and addresses are listed on the order, and (ii) the originating juvenile court, with a completed clerk's certificate of mailing, for inclusion in the child's juvenile court file.

(5) *(Order determining custody— continuation of jurisdiction)* If the court orders custody to a parent subject to the jurisdiction of the court with services to one or both parents, the court may direct the order be prepared and filed in the same manner as described in paragraphs (1)–(4) of this subdivision.

**(c) [Appointment of a legal guardian of the person (§ 728)]** At any time during wardship of a person under 18 years, the court may appoint a guardian, or may terminate or modify a previously established guardianship, in accordance with the requirements in rule 1496.2. ~~If the probation officer or the child's attorney recommends or requests by filing Judicial Council forms JV-600 and JV-740 that a guardianship of the person be established, the court shall set a hearing and order notice under section 1511 of the Probate Code.~~

~~(1) If the court determines that appointment of a guardian is necessary or convenient, and is consistent with the rehabilitation and protection of the child and with public safety, the court shall appoint a guardian of the person and order that letters of guardianship (form JV-325) issue as specified in the Probate Code.~~

~~(2) If the court appoints a guardian, the court may continue wardship and conditions of probation or terminate wardship.~~

~~(3) Proceedings to modify or terminate a guardianship established under section 728 shall be heard in juvenile court.~~

~~**(d) [Termination or modification of previously established guardianships (§ 728)]** At any time after the filing of a petition under section 601 or 602 and until the petition is dismissed or wardship is terminated, the court may terminate or modify a guardianship of the person previously established by the juvenile court or the probate court. If the probation officer recommends to the court by filing Judicial Council forms JV-600 and JV-740 that an existing guardianship be~~

~~modified or terminated, the court shall order the appropriate county agency to file the recommended motion.~~

~~(1) The hearing on the motion may be held simultaneously with any regularly scheduled hearing regarding the child. Notice requirements under Probate Code section 1511 shall apply.~~

~~(2) If the court terminates or modifies a previously established probate guardianship, the court shall provide notice of the order to the probate court that made the original appointment. The clerk of the probate court shall file the notice in the probate file and send a copy of the notice to all parties of record identified in that file.~~

**Rule 1496. Reviews and permanency planning hearings**

**(a) [Six-month status review hearings (§§ ~~727.3~~ 727.2, 11404.1)]** A status review hearing must be conducted no less frequently than once every six months from the date the ward entered foster care, for any ward removed from the custody of his or her parent or guardian under section 726 and placed under section 727. The court may consider the hearing at which the initial order for placement is made as the first status review hearing.

(1) (*Consideration of reports (§ ~~727.3~~ 727.2(d)*) The court ~~shall~~ must review and consider the social study report ~~of~~ and updated case plan submitted by the probation officer, and ~~of~~ the report submitted by any court-appointed special advocate, as well as any other reports filed with the court pursuant to section ~~727.3(g)~~ 727.2(d).

(2) (*Return of child if not detrimental (§ ~~727.3~~ 727.2(f)*) At any status review hearing prior to the first permanency hearing, the court must order the return of the ward to the parent or guardian unless it finds the probation department has established by a preponderance of evidence that return would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the ward. The probation department ~~shall have~~ has the burden of establishing that detriment. ~~The failure of the child to participate in court-ordered treatment programs shall be prima facie evidence of detriment.~~ In making its determination, the court must review and consider all reports submitted to the court, and must consider the efforts and progress demonstrated by the child and the family and the extent to which the minor availed himself or herself of the services provided.

(3) (*Findings and orders (§ ~~727.3~~ 727.2(d)*) The court ~~shall~~ must consider the safety of the ward and make findings and orders that determine the following:

(A) The continuing necessity for and appropriateness of the placement~~s.~~;

(B) The extent of the probation department's compliance with the case plan in making reasonable efforts to safely return the child to the child's home and to complete whatever steps are necessary to finalize the permanent placement of the child;

(C) The extent of progress that has been made by the child and parent or guardian toward alleviating or mitigating the causes necessitating placement in foster care; and

(D) The likely date by which the child may be returned to and safely maintained in the home or placed for adoption, legal guardianship, or another permanent plan.

(E) In the case of a child who is 16 years of age or older, the court must determine the services needed to assist the child to make the transition from foster care to independent living.

(4) The determinations required by (a)(3) must be made on a case-by-case basis, and the court must reference, in its written findings, the probation officer's report and any other evidence relied upon in reaching its decision.

**(b) [Permanency planning hearings (§§ 727.2, 727.3, 11404.1)]** A permanency planning hearing for any ward who has been removed from the custody of a parent or guardian and not returned at a previous review hearing must be held within 12 months of the date the ward entered foster care and periodically thereafter, but no less frequently than once every 12 months while the ward remains in placement. However, when no reunification services are offered to the parents or guardians, under section 727.2(b), the first permanency planning hearing must occur within 30 days of disposition.

(1) (*Consideration of reports (§ 727.3)*) The court ~~shall~~ must review and consider the social study report ~~of~~ and updated case plan submitted by the probation officer, and ~~of~~ the report submitted by

any court-appointed special advocate, as well as any other reports filed with the court pursuant to section ~~727.3(g)~~ 727.3(a)(2).

(2) (*Findings and orders*) At each permanency planning hearing the court ~~shall~~ must ~~also~~ consider the safety of the ward and make findings and orders regarding the following:

(A) The continuing necessity for and appropriateness of the placement;

(B) The extent of the probation department's compliance with the case plan in making reasonable efforts to safely return the child to the child's home and to complete whatever steps are necessary to finalize the permanent placement of the child; ~~and~~

(C) The extent of progress that has been made by the child and parent or guardian toward alleviating or mitigating the causes necessitating placement in foster care~~.~~; and

(D) The permanent plan for the child, as described in section (3), below.

(3) (*Selection of a permanent plan (§ ~~727.3(f)(1)~~ 727.3(b)*) At the first permanency planning hearing, the court ~~shall~~ must select a permanent plan ~~of return home, or another permanent plan consistent with sections 727.3 (f) (k)~~. At subsequent permanency planning hearings, the court ~~shall~~ must either make a finding that the current permanent plan is appropriate or select a different permanent plan, including returning the child home, if appropriate. The court must choose from one of the following permanent plans, which are, in order of priority:

(A) A permanent plan that immediately returns the child to the physical custody of the parent or guardian. This must be the permanent plan unless no reunification services were offered under section 727.2(b), or unless the court finds that the probation department has established by a preponderance of evidence that return would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the ward. The probation department has the burden of establishing that detriment. In making its determination, the court must review and consider all reports

submitted to the court, and must consider the efforts or progress, or both, demonstrated by the child and family and the extent to which the minor availed himself or herself of the services provided.

(B) A permanent plan of return of the child to the physical custody of the parent or guardian, after six additional months of reunification services. The court may only order this plan if the court finds that there is a substantial probability that the child will be able to return home within 18 months of the date of initial removal.

(C) A permanent plan of adoption. When this plan is identified, the court must order that a hearing under section 727.31 be held within 120 days.

(D) A permanent plan of legal guardianship. When this plan is ordered, the court must set a hearing pursuant to the procedures described in section 728 and rule 1496.2.

(E) A permanent plan of placement with a fit and willing relative. When this plan is ordered, the court must specify that the minor will be placed with the appropriate relative on a permanent basis.

(F) A permanent plan of placement in a planned, permanent living arrangement. The court may only order this permanent plan after considering, and ruling out, each of the other permanent plan options listed above. If, after doing so, the court concludes that a planned permanent living arrangement is the most appropriate permanent plan for the child, it must also enter a finding, by clear and convincing evidence, that there is a compelling reason, as defined in section 727.3(c), for determining that a plan of termination of parental rights and adoption is not in the best interest of the child.When a planned permanent living arrangement is ordered, the court must specify the type of placement. The court must also specify the goal of the placement, which may include, but is not limited to, a goal of return home, emancipation, guardianship, or permanent placement with a relative.

(4) *(Involvement of parents or guardians)* If the child has a continuing involvement with his or her parents or legal guardians, they must

be involved in the planning for permanent placement. The permanent plan order must include an order regarding the nature and frequency of visitation with the parents or guardians.

**(c) [Post-permanency status review hearings (§ ~~727.3(c)~~ 727.2]** A post-permanency status review hearing ~~shall~~ must be conducted for wards in placement annually, six months after each permanency planning hearing.

(1) (*Consideration of reports (§ ~~727.3~~ 727.2(d)*) The court ~~shall~~ must review and consider the social study report ~~of~~ and updated case plan submitted by the probation officer, and ~~of~~ the report submitted by any court-appointed special advocate, as well as any other reports filed with the court under section ~~727.3(g)~~ 727.2(d).

~~(2) (*Return of child if not detrimental (§ 727.3)*) The court must order the return of the ward to the parent or guardian unless it finds the probation department has established by a preponderance of evidence that return would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the ward. The probation department shall have the burden of establishing that detriment. The failure of the child to participate in court-ordered treatment programs shall be prima facie evidence of detriment.~~

~~(3)~~(2) (*Findings and orders*) At each post-permanency status review hearing the court ~~shall~~ must ~~make a finding about whether the current permanent plan continues to be appropriate for the ward. The court shall also~~ consider the safety of the ward and make findings and orders regarding the following:

(A) Whether the current permanent plan continues to be appropriate. If not, the court must select a different permanent plan, including returning the child home, if appropriate. However, the court must not order the permanent plan of return home after six more months of reunification services, as described in subdivision (b)(3)(B), unless it has been 18 months or less since the date the child was removed from home;

~~(A)~~(B) The continuing necessity for and appropriateness of the placement; and

~~(B)~~(C) The extent of the probation department's compliance with the case plan in making reasonable efforts to complete whatever steps are necessary to finalize the permanent ~~placement~~ plan of the child.

**(d) [Notice of hearings; service; contents (§§ ~~727.3,~~ 727.4)]** Not earlier than 30 nor less than 15 calendar days before each hearing date the petitioner or the clerk ~~shall~~ must serve written notice on all persons required to receive notice under rule 1407, as well as the child's present custodian, any court-appointed special advocate, and the counsel of record. The notice of hearing ~~shall~~ must be served by personal service or by first class mail or certified mail, addressed with the last known address of the person to be notified. Judicial Council form *Notice of Hearing—Juvenile Wardship Proceeding* (JV-625) may be used. Proof of notice must be filed with the court.

(1) The notice ~~shall~~ must contain the information required by rule 1407, the nature of the hearing, and any recommended change in custody or status~~, and~~.

(2) The notice must include a statement that the child and the parent or guardian have a right:

(A) – (C) * * *

~~(2)~~(3) The notice to the present custodian of the child ~~shall~~ must indicate that the custodian may:

(A) Be present at the hearing; and

(B) Submit written material the custodian considers relevant.

**(e) [Report (§§ 706.5, 706.6, 727.2(c), ~~727.3(f),~~ 727.3(a)(1), 727.4(b))]** Before each hearing described above, the probation officer ~~shall~~ must ~~make an~~ investigat~~ion~~e and prepare a social study report, including an updated case plan, that ~~shall~~ must include all of the information required in sections 706.5, 706.6, 727.2, and 727.3~~, and 727.4~~. The report ~~shall~~ must contain recommendations for court orders and ~~the reasons~~ must document the evidentiary basis for those recommendations.

At least 10 calendar days before each hearing, the petitioner ~~shall~~ must file the report and provide copies of the report to the ward, the parent or

guardian, all attorneys of record, and any court-appointed special advocate.

**(f)** **[Hearing by administrative panel (§§ ~~727.3(d)~~ 727.2(h) and 727.4(d)(7)]** The status review hearings described in subdivisions (a) and (c) above may be conducted by an administrative review panel, provided:

(1) – (3) * * *

(4) The panel makes findings as required by ~~subsection~~ subdivision (a)(3) or (c)(3) above and submits them to the juvenile court for approval and inclusion in the court record

**Rule 1496.2. Appointment of legal guardians for wards of the juvenile court; modification or termination of guardianship**

**(a)** **[Proceedings in juvenile court (§728)]** Proceedings for the appointment of a legal guardian for a minor who is a ward of the juvenile court under Welfare and Institutions Code section 725(b) must be held in the juvenile court.

**(b)** **[Recommendation for guardianship (§728(c))]** On the recommendation of the probation officer supervising the minor, the motion of the attorney representing the child, or the court's own motion and order that a legal guardian should be appointed for the minor, the court must set a hearing to consider the establishment of a legal guardianship, and must order the probation officer to prepare an assessment that includes:

(1) A review of the existing relationship between the minor and the proposed guardian;

(2) A summary of the child's medical, developmental, educational, mental, and emotional status;

(3) A social history of the proposed guardian, including a screening for criminal records and any prior referrals for child abuse or neglect;

(4) An assessment of the ability of the proposed guardian to meet the child's needs and the proposed guardian's understanding of the legal and financial rights and responsibilities of guardianship; and

(5) A statement confirming that the proposed guardian has been provided with a copy of Judicial Council form *Guardianship Pamphlet* (JV-350) or *Guardianship Pamphlet (Spanish)* (JV-355.)

**(c)** **[Forms]** The probation officer or child's attorney may use Judicial Council forms *Juvenile Wardship Petition* (JV-600) and *Petition to Modify Previous Orders—Change of Circumstance*s (JV-740) to request that a guardianship hearing be set.

**(d)** **[Notice (§728(c))]** The clerk must provide notice of the hearing to the child, the child's parents, and other individuals as required by Probate Code section 1511.

**(e)** **[Conduct of hearing]** The court must read and consider the assessment prepared by the probation officer and any other evidence. The preparer of the assessment must be available for examination by the court or any party to the proceedings.

**(f)** **[Findings and orders]** If the court finds that establishment of a legal guardianship is necessary or convenient, and consistent with the rehabilitation and protection of the minor and with public safety, the court must appoint a legal guardian and order the clerk to issue letters of guardianship (Judicial Council form *Letters of Guardianship (Juvenile)* (JV-325).)

(1) The court may issue orders regarding visitation and contact between the minor and a parent or other relative.

(2) Upon the appointment of a legal guardian, the court may continue juvenile court wardship and supervision or terminate wardship.

**(g)** **[Modification or termination of the guardianship, or appointment of a co-guardian or successor guardian]** A petition to terminate a guardianship established by the juvenile court, to appoint a co-guardian or successor guardian, or to modify or supplement orders regarding the guardianship must be filed and heard in juvenile court. The procedures described in rule 1432 must be followed, and Judicial Council forms *Juvenile Wardship Petition* (JV-600) and *Petition to Modify Previous Orders—Change of Circumstances* (JV-740) must be used. The hearing on the motion may be held simultaneously with any regularly scheduled hearing regarding the child.

**Rule 1496.3. Termination of parental rights for child in foster care for 15 of the last 22 months**

**(a)** **[Requirement (§§ 727.32(a), 16508.1]** Whenever a child has been declared a ward and has been in any foster care placement for 15 of the most recent 22 months, the probation department must follow the procedures described in Welfare and Institutions Code section 727.31 to terminate the parental rights of the child's parents, unless the probation department has documented in the probation file a compelling reason, as defined in Welfare and Institutions Code section 727.3(c), for determining that termination of parental rights would not be in the child's best interest, or has not provided the family with reasonable efforts necessary to achieve reunification.

(1) If the probation department sets a hearing pursuant to Welfare and Instututions Code section727.31, it must also make efforts to identify an approved family for adoption.

(2) If the probation department has determined that a compelling reason exists, it must document that reason in the case file. The documentation may be a separate document, or may be included in another court document, such as the social study prepared for a permanency planning hearing.

**(b)** **[Calculating time in foster care (§727.32(b))]** The following guidelines must be used to determine if the child has been in foster care for 15 of the most recent 22 months:

(1) Determine the date the child entered foster care, as defined in rule 1401(a)(7). In some cases, this will be the date the child entered foster care as a dependent.

(2) Calculate the total number of months since the date in (1) that the child has spent in foster care. Do not start over if a new petition is filed or for any other reason.

(3) If the child is in foster care for a portion of a month, calculate the total number of days in foster care during that month. Add one month to the total number of months for every 30 days the child is in foster care.

(4) Exclude time during which the child was detained in the home of a parent or guardian, was living at home on formal or informal

probation, at home on a trial home visit, or at home with no probationary status; in which the child was a runaway or "AWOL"; or was out of home in a non-foster care setting, including juvenile hall, California Youth Authority, a ranch, a camp, a school, or any other locked facility.

(5) Once the total number of months in foster care has been calculated, determine how many of those months occurred within the most recent 22 months. If that number is 15 or more, the requirement in (a) applies.

(6) If the requirement in (a) has been satisfied once, there is no need to take additional action or provide additional documentation after any subsequent 22-month period.

| ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address)*: | *FOR COURT USE ONLY* |
|---|---|
| TELEPHONE NO.: FAX NO. *(Optional)*:<br>E–MAIL ADDRESS *(Optional)*:<br>ATTORNEY FOR *(Name)*: | |
| **SUPERIOR COURT OF CALIFORNIA, COUNTY OF**<br>STREET ADDRESS:<br>MAILING ADDRESS:<br>CITY AND ZIP CODE:<br>BRANCH NAME: | |
| CASE NAME: | |
| **NOTICE OF HEARING—JUVENILE WARDSHIP PROCEEDING**<br>**Welfare and Institutions Code, § ☐ 601 ☐ 602** | CASE NUMBER: |

**NOTICE TO** *(name and address)*:

- **A hearing has been set for the date and time below. The child and the parent or guardian or noticed adult relative are entitled to be represented by an attorney.**
- **The court will appoint an attorney for the child if the child cannot afford to retain an attorney.**

**See important notice on page 2.**

1. A HEARING will be held as follows:

a. Date: Time: ☐ Dept.: ☐ Room:

b. Address of court ☐ same as noted above ☐ is *(specify)*:

2. The hearing is for the purpose of
   a. ☐ detention hearing.
   b. ☐ formal reading of petition, advisement of rights, and plea.
   c. ☐ jurisdiction hearing.
   d. ☐ disposition hearing.
   e. ☐ review.
   f. ☐ permanency hearing.
   g. ☐ other *(specify)*:

3. TO THE CHILD:
   **You have the right to present evidence at the hearing and to be represented by an attorney. The court will appoint an attorney for you if you cannot afford one.**
   ☐ You are ordered to be present at the hearing.

4. TO THE PARENT, GUARDIAN, OR ADULT RELATIVE:
   You have the right to be present at the hearing. You are entitled to have an attorney present to represent you at the hearing.

Date:

. . . . . .
(TYPE OR PRINT NAME)

(SIGNATURE)



Form Approved for Optional Use
Judicial Council of California
JV-625 [Rev. January 1, 2003]



WEST GROUP

Welf. & Inst. Code,
§§ 630, 630.1, 639, 658,
659, 660, 679, 727.4

## — NOTICE TO PARENT OR GUARDIAN —

1. If your child is ordered to make restitution to the victim, you shall be liable to the extent of your ability to pay.
2. You shall be liable to the county to the extent of your ability to pay for the following:
   - Fees for an attorney who is appointed to represent your child.
   - Fines and penalty assessments ordered against your child.
3. You may be liable for the costs of support of your child in a county placement or institution.