

# TRANSFER TO ADULT COURT

## A GUIDE FOR FAMILIES IN CALIFORNIA



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PREPARED BY PACIFIC JUVENILE DEFENDER CENTER MARCH 2019



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We are grateful to many people for their contributions in developing the finished Guide. In May 2018, the PJDC project team brought together a group of advocates who work directly with families of youth undergoing transfer proceedings. We met at the San Jose, California, offices of Silicon Valley De-Bug with the goal of creating a resource that would both clarify the laws governing transfer and clearly explain how families can support young people in the transfer process. The group created a detailed roadmap for the Guide.

Sue Burrell and Rourke Stacy-Padilla developed an initial draft of the Guide from meeting notes, and in the months that followed, group members provided comments. Susan Lindheim edited the draft and worked to make the Guide more readable. Rourke Stacy-Padilla and Charisse Domingo contributed their outstanding photography for use in the final product, and Amymade Graphic Design designed and produced it. Alejandro Alcantára translated the entire Guide into Spanish. The creators of Guide include:

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## Introduction

While most youth who are arrested on suspicion they committed a crime are handled in juvenile court, California law allows some to be transferred to the criminal court for adults. When deciding whether a young person's case should be transferred to adult court, the juvenile court judge focuses on the young person and their background, as well as the crime they are charged with. Staying in the juvenile system means that the young person will have access to education, programs, and counseling. Sending a youth to the adult system adult prison means exposing them to long sentences in adult prison. Also, because of the enactment of Proposition 57 in 2016, our transfer laws have changed in ways that should help more young people to stay in juvenile court. Because of this, it is very important for families to be involved and to provide information that can be useful in giving the court the information needed to keep the young person in the juvenile system. This Guide has been written to help families to understand the law and ways to support young people facing transfer.

Throughout this Guide, we use the term “family” broadly to include relatives, friends and others who care about the young person and want to help them. Youth coming before the court may not have close relatives involved in their life or their relatives may live far away, but many other people can play a supportive “family” role. The Guide offers step-by-step examples of ways that support from a variety of people in the young person's life can be used to help defeat transfer to adult court.

### WHAT IS TRANSFER AND WHY IS IT IMPORTANT?

Under current law in California, a youth's case starts in juvenile court. After a youth is arrested and charged with a crime, the prosecutor (district attorney) may file a motion in juvenile court requesting that the case be transferred to the adult criminal court. The court will then hold a transfer hearing where both sides may present evidence as to why the young person should stay in juvenile court or be transferred to adult court. If the case is transferred, it is handled under the laws for adults, not the juvenile court laws. Transfer has very serious consequences for the young person and their future.

Normally, youth who commit a crime when they are under 18 years of age, can be held in juvenile institutions up to age

21, or age 25 in certain cases. In the adult criminal system, youth who are transferred may be held up to the amount of time an adult would serve, which could be for decades or even life in prison. Although the adult system is attempting to move toward a more rehabilitative model, it still relies primarily on punishment through long incarceration.

The programs and opportunities for growth and education also differ greatly in the adult and juvenile systems. In the juvenile system, youth are supposed to receive education, and “rehabilitative” services to help address their needs, such as treatment for trauma, psychological and emotional challenges, and substance abuse. For immigrant youth, being handled in the juvenile system may also provide better protection in immigration proceedings. The adult system has many fewer educational and rehabilitative services, and young people in adult prisons are much more likely to be physically or sexually harmed by older adults.

Youth who are tried in the adult system also receive criminal convictions that may affect their ability to be admitted to college or to receive financial aid; get a job or a professional license; receive public benefits or join the military. For those handled in the juvenile system many of the consequences do not apply, and some youth may be able to seal their record.

Sometimes young people or those around them think it would be better to go to the criminal system because they want to be viewed as “adults,” or they know someone in state prison. We hope this Guide will help to explain why that is a dangerous belief.

Because of the very serious consequences of being handled in the adult system, the California Supreme Court has said that “...the certification of a juvenile offender to an adult court has been accurately characterized as ‘the worst punishment the juvenile system is empowered to inflict.’” *Ramona R. v. Superior Court* (1985) 37 Cal.3d 802, 810.

### WHY IS IT IMPORTANT FOR FAMILIES AND ATTORNEYS TO WORK TOGETHER?

Every young person who faces a transfer hearing will have an attorney to represent them. It may be a public defender, an alternate defender, a court appointed panel attorney, or an attorney hired by the young person's family. Some attorneys may have access to investigators or social workers to help

them prepare the case, but some do not. In general, the system is under-resourced for juvenile defense. This means that lawyers do not always have the help they need to locate people who were present when the crime was allegedly committed; to interview people who know the young person; or to obtain records from school or treatment services. This information is needed to help present a well-rounded picture of what the young person is like; what challenges they have faced in their life; and how they are likely to grow and change over time. Families are often the best source for this information, and by making sure the lawyer has it, they can play an important role in preventing transfer to adult court.

A primary purpose of this Guide is to help families to be aware of the many ways they can serve as resources in transfer proceedings. An equally important purpose of the Guide is to show attorneys how families can contribute to the process, and the importance of building trust so that can happen.

In some counties, there are organizations with skilled advocates who help families to be involved at every step of the transfer proceedings, working with the young person's attorney. These organizations call what they do "participatory defense." Developed by families in San Jose, California, participatory defense is a community organizing model for people facing charges, their families, and communities to impact the outcomes of their cases and transform the landscape of power in the court system. In a participatory defense model, families are involved at every stage of the proceeding. This Guide has a special section on participatory defense.

In the past several years, California's laws on transfer have changed dramatically. Under the old laws, the focus was on the crime the young person was accused of committing, and the law presumed that the young person should be sent to adult court. This began to change in 2015, when California enacted S.B. 382, which required courts to look more closely at the characteristics of the young person – their level of maturity, whether they have disabilities, their family background, influences of their peers or the community, their capacity to change, and their level of involvement in the crime. Also, as a result of the changes to the law enacted

in 2016 by Proposition 57, the prosecutor must now prove that the young person cannot be rehabilitated in the juvenile system and the court must look at all of the information about the young person – not just the crime.<sup>1</sup> Prosecutors are no longer able to directly file cases against juveniles; judges are the only ones who can make the decision whether a young person should be transferred to adult court.

The recent changes in California laws mean that young people subjected to transfer hearings have a much better chance of staying in juvenile court. It means that it is especially important for courts to have a complete picture of the young person when the transfer decision is made. Families reading this Guide should also know that families and formerly system-involved youth were instrumental in getting our laws changed. They helped to draft Proposition 57, collected signatures to get it on the ballot, and educated voters about why changes in the law were important for California. It was because they shared their personal stories that the public, media and policymakers realized how damaging transfer is and how unfair the transfer process was.

Families will continue to play an important role in individual cases and in future systemic change. They are helping us to show why it is important to treat youth as youth and keep them in the system designed for them. They are often strong messengers in showing us that system-involved youth are not just "bad kids." They know best that many of the youth facing transfer are youth who have suffered family disruption and loss; have not been well-served by other systems; have experienced trauma; have mental health issues or disabilities; have suffered from the effects of poverty; and been exposed to differential treatment of youth of color. They also know best about the strengths of each young person; their support systems; and their capacity for growth and change.

Organizations like Silicon Valley De-Bug and Youth Justice Coalition are also important in ongoing efforts to improve the justice system. They include young people and their families in leadership roles – designing and implementing solutions from their experiences that can transform the system.

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<sup>1</sup> For the text of the transfer law (Welfare & Institutions Code, § 707) after S.B. 382 and Proposition 57, go to the Blue Pages.







# Overview of Court and Transfer Process and How Families Can Assist

This section of the Guide describes the law of transfer and offers suggestions for family involvement. Further information about the law is available in the Blue Pages referenced in footnotes.

## WHO CAN BE TRANSFERRED?

As of January 2019, youth can be transferred to adult court if they were 16 or 17 years of age at the time of the alleged offense and charged with committing any felony.<sup>2</sup>

The only exception to this is that if the youth was 14 or 15 years of age at the time of allegedly committing an offense listed in Welfare and Institutions Code section 707(b), but was not apprehended (arrested) prior to the end of juvenile court jurisdiction (currently age 25), the prosecutor may make a motion to transfer the youth from juvenile court to the adult criminal court. The motion must be made before the young person has an adjudication or admits the charges.<sup>3</sup>

## WHEN IS THE TRANSFER MOTION FILED?

The prosecutor may file a transfer motion at the time the juvenile court petition is filed or at any time before the adjudication (trial) or admission (guilty plea),<sup>4</sup> but notice of the motion must be given at least five judicial days (court days) before the transfer hearing.<sup>5</sup>

In a few serious cases where a transfer motion is not immediately filed, it may be best for the young person to admit the charges early or move quickly to adjudication - to be able to stay in juvenile court. Because the consequences of transfer are so great, this requires careful discussion with the attorney and consideration of the circumstances.

## WHAT HAPPENS IN THE TRANSFER PROCEEDING?

The transfer hearing is not the same as a trial, where the charges must be proved beyond a reasonable doubt. Instead, the judge normally assumes that the young person

is guilty of the charged offense(s), and then decides whether (even if the person did what has been charged) the young person can be rehabilitated in the juvenile system based on the criteria (factors) in the law.

## PRIMA FACIE SHOWING

Even though the judge decides transfer assuming that the young person did what has been charged, there is an opportunity for the defense to question the evidence supporting the charges through a hearing called a prima facie showing.<sup>6</sup>

The prima facie hearing showing occurs before the transfer hearing. At this stage of the proceedings, the defense demands that the prosecution prove that there is probable cause that the young person committed the alleged offenses.<sup>7</sup> This is not a full trial, and the prosecutor is not required to produce the people who saw what happened – just the people who prepared the arrest reports.

For some cases, this can be a helpful way to bring out facts that show that the case may be less serious than originally charged, or that the young person's role was not as described in the arrest report. This can also be used to bring out helpful facts, such as that the young person was being directed by older youth, or was surprised at what happened. The standard of proof for the prosecution in these cases is very low, and it is similar to the standard used to arrest someone. Families should be aware that the attorney may have reasons to *not* ask for a prima facie showing because there are some circumstances where going forward with the hearing could result in the prosecutor adding additional charges. If the attorney does not want to have a prima facie showing, families should ask why the attorney has decided not to proceed with the hearing.

If the judge does not believe that the prosecutor made a prima facie showing, the defense attorney will ask the judge to dismiss the transfer motion, so the young person can stay in juvenile court.

2 Go to Blue Pages for the text of the law, Welfare and Institutions Code section 707(a)(1). Until S.B. 1391 was enacted in 2018, Welfare and Institutions Code section 707(a)(2), allowed youth 14 and 15 years of age to be transferred if they were alleged to have committed an offense listed in Welfare and Institutions Code section 707(b). S.B. 1391 repealed that provision, effective January 1, 2019. Youth in cases in process at the time of the effective date may be able to argue that the new law applies in their case, and should consult with their attorney.

3 Go to Blue Pages for the text of this exception in Welfare and Institutions Code section 707(a)(2) and the list of offenses in section 707(b) that make youth eligible for transfer under that section.

4 Go to Blue Pages for the text of the law, Welfare and Institutions Code section 707(a)(1).

5 Go to Blue Pages for the text of the law, California Rules of Court, rule 7.766(b).

6 Go to Blue Pages for the text of the law, California Rules of Court, rule 5.766(c).

7 Also in California Rules of Court, rule 5.766 (c).

## THE FIVE TRANSFER CRITERIA

At the transfer hearing, the court must look at the young person using five “criteria” to decide whether the young person should be transferred to adult court.<sup>8</sup> “Criteria” are factors the law says should be considered, and under each one, the law provides additional considerations the court may look at that fit under that criterion.

At the end of the transfer hearing, the court decides whether the young person should be transferred based on the “totality of the circumstances” (which means “in view of everything”) and not any particular criterion. This is very different from the law before Proposition 57, which allowed the court to order transfer based on one or two criteria.

### **Criterion 1:**

#### **The degree of criminal sophistication exhibited by the young person.**

This includes age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense; impetuosity (impulsive behavior) or failure to appreciate risks and consequences of criminal behavior, the effect of family, adult, or peer pressure on the minor’s actions, and the effect of the minor’s family and community environment and childhood trauma.

### **Criterion 2:**

#### **Whether the young person can be rehabilitated before the expiration of the juvenile court’s jurisdiction**

This criterion asks the court to consider whether the young person can be rehabilitated before reaching the maximum age for juvenile court treatment. It includes consideration of the young person’s potential to grow and mature. The expiration of court jurisdiction for youth who are committed to the Division of Juvenile Facilities is age 25.

### **Criterion 3:**

#### **The young person’s previous delinquent history.**

This includes the seriousness of the young person’s previous delinquent history and the effect of the minor’s family and community environment and childhood trauma on the young person’s previous delinquent behavior. This refers to previous court cases and adjudications of guilt.

### **Criterion 4:**

#### **The success of previous attempts by the juvenile court to rehabilitate the minor.**

This includes the adequacy of the services previously provided by the court to address the young person’s needs. In other words, whether the previous services given to the youth were the right ones and whether they were effective.

### **Criterion 5:**

#### **The circumstances and gravity of the offense(s) charged against the young person.**

This includes the actual behavior of the young person, their mental state, their degree of involvement in the crime, the level of harm actually caused by the young person, and their mental and emotional development.

Family members and others who know the young person have a tremendous amount of information to offer on each of the five criteria. They know the young person best. They know about difficulties in school, bullying or pressure from youth in the neighborhood, traumatic experiences such as the death of family members or friends, abusive behavior by other family members, financial pressures and other negative experiences. They also know about the good things in the young person’s life and background that help to show that what happened does not define who the young person is or will be in the future. They can also provide information about how the young person has responded positively to guidance or programs in the community. The next sections of the Guide discuss the points in the transfer process that families can give this information.



<sup>8</sup> The full wording of each transfer criterion is included in the Blue Pages in Welfare and Institutions Code section 707.

## Working with Lawyers: Tips for Families

It is crucial that family and community members develop a partnership with the youth's attorney to achieve a positive transfer hearing outcome. While neither the attorney nor family members may start off with a sense of trust, building a trusting relationship is worth the effort. Family and community members can be critical in providing information and developing evidence that will be used in the transfer brief and at the transfer hearing. Also, family and community members can be teachers in helping court professionals to understand the surrounding community environment and its impact on the young person.

If you live in a community that has a participatory defense hub, you should contact it at the earliest possible moment so coordination with the defense attorney can begin. If that is not an option, you should personally contact counsel to offer your help with the investigation and preparation for the transfer brief and hearing. Some public defender offices or attorney panels have social workers who help with transfer hearings, and if that is the case, the social worker assigned to the case will be a key contact for families.

Some lawyers are not accustomed to family participation or familiar with the benefits of participatory defense. It helps to be prepared with ways to talk to the attorney about the value of family input in the transfer process, and to demonstrate that families can be an asset, not a problem, in the defense of the case. Here are some suggested statements:

- What families know is very important to the transfer hearing – for example, knowing things about the neighborhood where this happened;
- Information about the family itself and family history is central to the hearing;
- Having the support and involvement of family and people in the community helps to show the young person in a more positive light; and
- It is important to gather evidence right away, and families can help.

You should regularly be in contact with the attorney, but remember that they have genuine time constraints. They may be in court, in trial, or working with other clients, and may not always have time to meet with you or take your calls at the very moment you reach out by telephone or email. Sometimes, due to a lack of familiarity with participatory defense, or ignorance of what the family can offer, the attorney may be uncertain about your participation in the case. If that happens, do not give up. If they do not return

your calls or emails, try to talk to them at court and request a meeting with them at their office so there can be more time to focus on the case. Be patient and graceful and make it clear that you're interested in the case and available to help as much as you can. Some of the lawyers who now embrace and appreciate family involvement the most started out being hesitant.

*Resilience OC works with immigrant youth in Orange County and is a member of the Participatory Defense Network. In one case the youth's family and Resilience OC organizers helped create a social biography packet of the young man's life and future prospects. They gave it to the attorney right before the transfer hearing and asked the attorney to allow the family and community to be let into the proceedings. Although the attorney had been reluctant to engage with the family earlier, he was so impressed with the packet that he used all the information they gathered to convince the judge that this young man should stay in the juvenile system. The result? This young man was kept in youth court. Furthermore, he avoided a DJJ (juvenile prison) placement altogether.*

—Silicon Valley De-Bug

Make yourself available for contact by the attorney or interviews with the attorney's social worker or investigator. These people work closely with the attorney to assist in gathering important information for the transfer hearing. At the same time, take action when needed if the attorney does not respond to your requests to meet about the case. If you have tried multiple times to get a hold of the attorney and they are court-appointed, you can email them and their supervisor and explain your concerns.

One of the key criteria in transfer (described at greater length in the section on The Five Transfer Criteria) is the background and challenges of the youth growing up. This is crucial in understanding the context of the young person's life. During any interview with the youth's attorney or the attorney's investigator or social worker, try to be as open as





possible about any difficulties, challenges, or trauma that the young person faced. It could help the attorney in at least understanding the youth's background, and in the case that the prosecutor brings something up, the attorney would have a way to address it. Also share information about the neighborhoods and environments the youth has grown up in.

You can ask the defense attorney to go over the results of any investigation and to show you the draft transfer brief before it is finalized. However, be prepared that some attorneys may not want to share their work-product and there is no legal requirement that they do so. Make sure the lawyer is aware of anything wrong, misleading, or out of context. Discuss with the attorney any concerns about disclosure of particular information.

Talk with the attorney before any contact with the probation department, especially prior to the probation interview before the transfer hearing. This is discussed at greater length in the section on Preparation for Probation Officer Interview.

Attend all the youth's court appearances if possible. Be patient as there may be many continuances and delays as

the attorney prepares for the transfer hearing. The stakes are very high in transfer cases, and it is important for the case to be thoroughly prepared.

If you are asked to testify at the transfer hearing, request from the attorney a list of the questions to be asked, and suggest practicing with the attorney beforehand. This is discussed at great length in the section on Preparation for the Probation Officer Interview.

Remember that this process may take a long time. There may be many delays for investigation and record gathering. The hearing itself may take several days. Because transfer cases are so serious, it is important that the family and the attorney recognize and support each other's efforts to assure a thorough investigation and hearing on the transfer motion.

Going through a transfer proceeding is difficult for everyone in the family. The transfer hearing may bring up issues that are painful and raw. The prosecutor may say things that are upsetting to hear. Self-care and ways to provide support for your child are discussed at greater length in the section on Providing Emotional Support.

## A Word About Confidentiality and the Role of the Attorney

It is important for family and community members to understand that the attorney represents the young person – not the family. The attorney has a legal duty of confidentiality to the young person. This means that he or she cannot talk about anything the young person has said without the permission of the young person.<sup>9</sup> Also, it is essential to understand that if you are present when the young person says something to the attorney, that could “waive” (take

away) the right to confidentiality, and if that happens, you could be called to testify by the prosecutor about what was said. It is extremely important to have a conversation with the attorney about how to protect the young person's right to confidentiality. There are ways for the family and community to work with the attorney while still protecting these important rights, but it must be done in a conscious manner.





## Families Can Help Even Before Charges Are Filed

### QUESTIONING BY THE POLICE

From the very moment a young person comes into contact with the police, families can help to protect the child's rights. When a young person is arrested, her or she may be taken to a police station and questioned about what happened. In some situations, they may be at school, at the "scene" of an alleged incident, or in the community. Youth have a right to make a phone call within an hour of being taken into custody, and if they call their family it is very important to advise the youth not to talk about the details of the case and to immediately ask for an attorney. From the moment they are taken into custody, they have the right to an attorney, free of charge.

In California, the police must automatically contact an attorney to advise young people 15 years of age and younger, and youths may not waive their *Miranda* rights to speak to the police unless a lawyer has advised them.<sup>10</sup> Older youth – 16 and 17-year-olds – must "unequivocally" (clearly) ask for a lawyer. It is important to understand that once a young person asks for an attorney, the police are not supposed to continue their questioning.<sup>11</sup> Also, it is important for families to understand that asking to see a parent does not require the police to stop questioning the youth.

No youth should ever waive their *Miranda* rights or speak to the police without first having been advised by a lawyer. Many young people do not understand the importance of the right to counsel. They may try to explain their way out of a situation, not realizing that they have given the police a fact that helps to prove they were at the scene of the alleged offense or did something illegal. They may believe the police when they are falsely told that if they say what happened, they will be able to go home. Police are allowed to use trickery and lies to obtain statements from youth, and they often do. They may take a youth's statements about what happened out of context or may inaccurately record the statement, and it is very difficult to undo this damage later. Also, police may try to wear the young person down. In the past, young people have "confessed" after been interrogated for many hours without food, sleep or contact with anyone outside. Youth should also be aware that anything they tell their probation officer may be used against them. Families should strongly advise youth to politely but firmly ask to speak to an attorney at the earliest possible moment.

### AT JUVENILE HALL AND UPON THE FILING OF A JUVENILE CASE

The importance of not talking about the offense continues when the young person is taken to juvenile hall, which is the detention center for juveniles. When youth make their

<sup>10</sup> Welfare and Institutions Code, § 625.6

<sup>11</sup> Edwards v. Arizona (1981) 451 U.S. 477



phone call to family or otherwise are in contact, family members should advise them not to talk to probation or anyone else about what happened in the case. In some counties, even though the public defender has not yet been formally appointed, families can contact the public defender's office and ask them to do a "welfare check" if they are concerned about the well-being of the young person, and any improper efforts of police or probation to question them. Also, families may want to contact the public defender's office to alert them about the case in situations where early involvement could help the lawyer to dissuade the prosecutor from filing a transfer motion.

Within a few days of the youth being taken into custody, a petition is filed and the case must go to court within a day of that filing. The petition is the document that gives the crime or crimes that the young person is accused of committing, the date the crime occurred, and the name of the victim if there is one; this is similar to the "charges" in an adult case. In many cases, the transfer motion is filed with the juvenile court petition. At the first court hearing, the court must appoint a lawyer for the youth, unless the youth's family has made other arrangements.

Although the lawyer represents the youth (not the family), good quality representation at the transfer hearing should include family involvement. From the very moment of appointment, the lawyer should be gathering records, interviewing family and others who know the youth, and investigating the underlying case.

### FAMILIES' ROLE WITH THE POLICE

Families may feel angry, disappointed, or fearful when their child is arrested. These feelings are natural – no one wants their child to be in contact with law enforcement. But it is important to address these feelings privately, and not to say things to the police or probation that can hurt the young person's case. For example, don't tell the police that your child is out of control, or that the child has been using drugs or stealing. Such information could be used by the prosecutor against your child later, resulting in more punishment. Also, telling your child to admit what they did to the police is not helpful. The best thing you can do is to

tell your child to speak to a lawyer who can advise him or her what to say or not say to the police and probation.

### PROVIDING EMOTIONAL SUPPORT

Families can also serve as an important source of emotional support to the young person throughout the arrest process and court case. It is stressful and frightening to be arrested and locked in a juvenile hall. It is important that even though you may be worried or upset with your child, they feel your love and support. Contact the juvenile hall as soon as possible to find out about telephone calls and visiting hours, and use them to the maximum extent to stay in touch with your child. If the regular visiting hours do not work for you, ask the probation officer in charge of your child's case to set up a special visit.

*"My son's attorney wasn't fighting for my son. There were times when the case felt hopeless, but then we kept doing things as a family and community to keep pushing the case. When I would see my son inside the hall, sometimes that was our only time to really talk about what needed to happen next. Between that and the hugs we would share, that was the emotional support he needed – we needed – for each other."*

—Gail Noble, Silicon Valley De-Bug

Your presence throughout the case can also help to produce a better result. When probation and the court know that you are involved with and care very much about your child, they will have a more positive view of the resources available to the young person through the juvenile system. Family support is often discussed in the reports that help the judge to decide what should happen to the child in transfer or disposition of the case.

## Take Good Care of Yourself

*Helping a young person facing transfer is stressful. To be the best helper, you need to take good care of yourself. Find support in talking to other family members, friends, and religious advisers. Seek out parent support groups, participatory defense organizations, or others who have experience with the transfer process. Ask for help when you need it. And find time to take care of your physical and emotional health – go for a walk, eat healthy food, and make time to do things you enjoy. As they say on the airplane safety advisory: before you try to help others, put on your own oxygen mask first.*

# The Transfer Hearing Process

## PROBATION OFFICER'S SOCIAL STUDY REPORT

Under the law, the court must order the probation officer to submit a report on the “behavioral patterns and social history” of the young person.<sup>12</sup> This report is very important because it is one of the primary things the court uses in making the transfer decision. Normally, the court orders the probation officer to do the social study report right after the transfer hearing is filed, but it may take a period of months for the report to be prepared.

The social study report normally contains a section on the alleged crime(s) – taken straight from the arrest report. It also contains a section on the young person's previous contact with law enforcement and juvenile court. Sometimes, these entries are incomplete or inaccurate, and it is important for families and the young person to talk to the defense attorney when such entries appear because the attorney can ask that they be removed from the report or corrected.

In the social study report there are usually sections on family history – often taken from past reports if they exist. If the family has had contact with the child welfare system, this may be reflected. If parents or family members have had contact with the criminal justice system, that may be included in the report. The report also has a section on school attendance and achievement levels. It has statements from the victim(s) in the case, and a statement from the young person if they have given one.

Some reports include information about the young person's interests, activities and plans for the future, but sadly, many do not. Also, some reports contain information about people in the community who support and are willing to help the young person. As will be discussed in the next section, this is an area where family members can help to strengthen the social study report in favor of the young person.

The report also goes through each of the five transfer criteria, often giving opinions about whether each factor suggests the need for transfer. Many social study reports also give an overall opinion about whether the young person should be transferred.

## PREPARATION FOR THE PROBATION OFFICER INTERVIEW; ATTORNEY INVOLVEMENT

Because the probation officer's social study is given great weight by the judge, it is very important for you to have as much input as possible into what the probation officer writes, and to make a good impression when you are interviewed by probation. Before talking to the probation officer, you should talk to the young person's lawyer to prepare for the interview. The lawyer should let you know the kinds of questions you will be asked, and how to handle difficult questions. The lawyer may also be able to give you information about when to expect the probation interview to take place, so you will know how much time you have to get ready. There is often a delay of weeks or even months.



<sup>12</sup> Go to the Blue Pages for the exact wording of the California Rules of Court, rule 5.678, on what must be in the report.

## PRACTICE QUESTIONS FOR THE PROBATION OFFICER INTERVIEW

- MY CHILD IS (kind, helpful, hard-working, talented)
- MY CHILD IS GOOD AT (fixing cars, using computers, drawing people, basketball, dancing)
- MY CHILD LIKES TO (write songs, play with his brothers and sisters, collect action figures, fix people's hair, sing)
- MY CHILD HOPES TO (go to college, work as a counselor, become a carpenter, join the Navy)

You should request an in-person interview. If being interviewed in English would be difficult, also ask for an interpreter to be present. It is much easier to provide additional information or clear up misunderstandings in person. Meeting face-to-face will also help you to present a supportive image and make it easier for to share photos or documents that could be helpful in the social study report. Meeting in person also makes it harder for the probation officer to simply pull statements or comments from other reports.

The best practice is for the attorney to be present at the interview. When possible try to have some sense of the attorney's availability for the interview so when the probation department calls you can select a time that would enable the attorney to be present. However, probation departments differ in policy and may not always be helpful in scheduling this interview at a time that is best for you, the attorney, and the probation officer.

If the attorney will not be present at the interview, he or she should advise the probation officer not to ask the young person about the offense or other specific things. You should write down what the attorney says about any limits on questioning to have it as a reminder if the probation officer still tries to question the young person. In addition, it may be helpful for you to have a support person present. These interviews can be stressful, and having someone who knows your family there can help you to feel more comfortable and to provide a backup to bring out things you might have otherwise have forgotten to say.

Before the interview, you may want to practice answering questions with the attorney or participatory defense experts. For example, you may want to practice answering questions about previous contacts with law enforcement – your child's or your own. Again, the attorney may have advised probation not to ask about the offense, but in some cases,

the attorney may have alternative advice about how to talk about the issue of guilt – for example if there may be an alibi or other defense at the trial. It may also be helpful to receive advice from the attorney about how to handle questions you prefer not to answer.

It is helpful to do a timeline of family history and any events that have had an impact on the young person's behavior. This may help to explain what was going on at the time of the offense – for example, if this was a difficult period because of something happening in the family or at school or in the community. It is not unusual for young people to become very lost after the death or other loss of key people in their life. Others fall into negative peer alliances after being physically attacked. Still others start getting into trouble when unaddressed disabilities or mental health disorders result in removal from school. Whatever has been happening in the young person's life may have direct relevance to the transfer criteria.

Preparation for the interview should also focus on positive things about the young person. What are they are interested in? What are their favorite activities? What are some good things they have done? So much of what happens in juvenile court focuses on the negative things that have happened. It is very important to shift the focus by consciously thinking about and being able to offer positive things.

Another tool for the interview is to write down things you might forget to say, and bring the paper to the interview as a reminder. This should include the names and contact information of other people you would like probation to contact about the young person. Your list could include teachers, family friends, faith community people, others who have worked with the young person, or participatory defense organizers. Make sure the probation officer understands that these are people in the community who want to support and/or assist the young person.



If you prepared material to share with the probation officer (participatory defense advocates often refer to this as a “social bio packet”), take the time to go through it with the probation officer. Explain what and who is in the photos, who wrote the letters of support, and tell the probation officer about the other documents you have gathered. This serves two purposes. First, you are giving the probation officer information that can and should be reflected in the social study report, and second, you are doing it in a way that would make it difficult for the probation officer to ignore or omit.

Also, immediately after the probation interview, you should write down as accurately as possible what happened. Write down the name and contact information for the probation officer you spoke to, the date and time of the interview. As much as possible, write down the questions the probation officer asked you and your answers. This will be helpful when you go over the report with the attorney later. Sometimes, things do not come out in the report the way you said them, and having this record will help the attorney to explain that. Write down any concerns you have about the interview, either in terms of what was asked or the answers you gave. Also, if you discussed giving the probation officer additional information or documents, write that down to help remind yourself later on.

If there have been any ongoing problems with the probation officer, keep track of that. For example, if you called the probation officer and received no response, write down the dates and times of your attempts. If you tried to give information to the probation officer and it was not accepted, that should be written down. You should also write down what happened in any experiences with probation that were disrespectful, unkind, or dismissive. This information should be given to the young person’s attorney.

You can request that the lawyer review the social study report with you, but there is no rule that says the lawyer must provide you with the report itself. You may want to mention that review of this report will enable you to inform the lawyer of any mistakes. Review will give you a chance to make sure the information you offered is included, and to give feedback on anything that may be incorrect or misleading. Remember, that the lawyer represents the youth and not the family so they do not have to share the social study, police report, or other information with you. However, the best practice is for lawyers to be able to protect their client’s confidentiality and enable the family to review how probation documented their statements.

## CHECKLIST FOR PROBATION INTERVIEW

- ☐ Request in-person interview
- ☐ Request interpreter if needed
- ☐ Try to have attorney present
- ☐ If attorney not present write down request that youth not be questioned about offense
- ☐ Bring a support person
- ☐ Practice answering questions
- ☐ Get advice from attorney on whether/how to talk about the offense at the interview
- ☐ Get advice about answering difficult questions
- ☐ Make a timeline of the young person’s life and how it relates to problems with the law
- ☐ Make a list of strengths, interests, abilities, goals
- ☐ Write down important points and take the paper to the interview to remind yourself
- ☐ Write down info for people you want contacted
- ☐ Write down any problems with probation (dates/times)
- ☐ Go over social study with the attorney to find errors/omissions



### HELPING TO PREPARE THE CASE

Families should actively help the attorney (or social worker) to gather documents that can be used in the transfer brief or in the hearing. These documents help to show that the young person is a whole person with many dimensions. Some of the documents may also help to show that the young person has background or characteristics that need to be considered to fully understand their behavior. These include, but are not limited to:

- **School records** (Report cards, attendance records, records of tests, evaluations or notes from teachers, records of extracurricular activities or sports)
- **Special education records** (IEPs, assessments, service records, and records showing when the youth was first found eligible for special education)
- **Medical records** (especially anything showing hospitalizations or problems such as traumatic brain injury, fetal alcohol syndrome, physical disabilities)
- **Mental health records** (including hospitalizations, evaluations, reports by therapists, medication lists)
- **Regional center records** or other records of evaluations or services for developmental disabilities
- **Child welfare records** (different terms may be used, but these are records of contacts with agencies dealing with abuse or neglect of children, and any foster care or group home placements)
- **Family Court records** (including divorce and child custody)
- **Employment records** (including paid and volunteer work)
- **Records of honors or certificates** in sports, art, music or other activities

Also, families can help to prepare the case by giving the attorney or social worker the names and contact information for people who can support the young person's staying in juvenile court either through written declarations/letters or by appearing as witnesses. These include:

- **Family members** (brothers/sisters, aunts/uncles/cousins, grandparents)
- **Family friends/godparents**
- **Teachers**
- **Coaches**
- **Community/ volunteer mentors**
- **Juvenile hall staff**
- **Faith community/religious advisers/chaplains**
- **Neighbors**
- **Probation officers or people who worked with the youth in placements**
- **Employers**

When possible, you should to create and provide a family tree to help explain how each person on the contact list fits into the young person's life. Also, you should create a list of all schools attended by the young person, and all the addresses where he or she has lived. These lists can be extremely useful in developing a timeline of the young person's life, and in providing needed information for further background investigation.

You should also collect photos or home videos or other records of the young person and family in a more positive environment. These could include including photos from school, with family, at community gatherings and participating on sports teams. These can be very persuasive



in showing the court that the young person has a full life with many people who support and love him or her. These kinds of records help the lawyer to refocus attention away from the offense and more on the young person as an individual with a family and community that will help him to grow and mature.

The defense attorney in the case may have more targeted requests that you can help with, as well. For example, the defense attorney may want help finding people or records that could show that the young person has had experiences that made him especially afraid, and therefore likely to see danger in situations where it does not really exist. Or, the attorney may want help with locating people who know something about what happened in the case that could be used in the transfer hearing.



*“In Santa Clara County, one of the mothers we work with learned that her son was requesting water at night in the juvenile hall, but staff would not provide it because “he should get a drink of water before bedtime,” and he was suffering. Her son’s attorney brought this up in court, and the judge ordered probation to provide the youth with water at night.”*

*—Cecilia Chavez,, Silicon Valley De-Bug*

Families can also be very important in keeping the attorney informed about how the young person is doing in juvenile hall and generally, as the case progresses. If you become aware that your child is having difficulties in juvenile hall, or is experiencing abuse by staff or other youth, let the attorney know. Or, if your child is doing well in juvenile hall, pass on the names of any staff who could give information about that to the young person’s attorney.

## **PARTICIPATORY DEFENSE**

While lawyers and families should always engage as partners to do the things suggested in this Guide, this work can be vastly enhanced by engaging in participatory defense with an organization such as Silicon Valley De-Bug (San Jose) or Youth Justice Coalition (Los Angeles). Participatory defense approaches this partnership with an eye to truly recognizing and elevating the role of families in the court process.

While court support exists everywhere, participatory defense is more involved. Developed by families in San Jose, California, it is a community organizing model. It helps people facing charges, their families, and the community to impact the outcomes of cases and transform the landscape of power in the court system. Participatory defense approaches cases with an organized, systematic means of preparation from beginning to end. It enhances defense by thoughtfully approaching each stage in the case, identifying what would be useful at that stage, and then producing it. For overloaded, under-resourced defenders, this can be like a dream come true. Many of the things defense attorneys would love to do, if only they had the time and support, are routinely handled through participatory defense teams.

Participatory defense centers on the involvement of families of young people ones facing charges. At participatory defense meetings, the family is welcomed into a community of people, many of whom have had loved ones going through the court process. The group meets regularly and brainstorms each case to come up with the best ways to address each issue in the case. Families move from feeling isolated and under-appreciated to recognizing that they have a great deal to offer in the court process. Families who begin by getting involved with these organizations in relation to their child’s case, often stay engaged with the organization to help provide a greater community voice in the way young people are treated by the system. At its core, participatory defense is bread and butter community organizing. It is not a service. At the root of it, families are transformed to be their own agents of change.

Participatory defense is especially valuable in transfer proceedings (and other juvenile matters, like the example on this page) because much of the preparation involves investigating family and community background, obtaining records, and seeking out people who know or have worked with the young person. It vastly expands what the court will know about the young person and their family and life – things that are at the core of the transfer decision. Families who attend court regularly also are able to change the dynamics of the court and the court actors.

One tool that participatory defense organizers have created is a social biography packet. A “social bio packet” allows the court to get to know the person facing charges beyond their case file. Families have a wealth of information regarding their loved one facing charges that range from giving context to an incident, presenting any previous challenges and traumas that a young person may have experienced, and rallying present/future prospects that can help the young person to grow and mature. These are collected in the form of letters, certificates, records, photos, and sometimes even social biography videos.

Participatory Defense hubs exist in a number of counties in California and the nation. In San Jose, California, the participatory defense hub is housed at Silicon Valley De-Bug. As creators of participatory defense, they have since trained other organizations to support their communities through this methodology. Some organizations do a multitude of strategies that include participatory defense. As of July 2018, California participatory defense hubs include:

- A L Costa Community Development Center, Newark
- CARAS, Gilroy
- Families United Engaged and Empowered, San Diego
- Fathers and Families of San Joaquin, Stockton
- Resilience OC, Orange County
- Reuniting Families, Contra Costa County
- San Mateo County Participatory Defense, East Palo Alto
- Silicon Valley De-Bug, San Jose
- Starting Over, Riverside
- Young Women’s Freedom Center, San Francisco
- Youth Justice Coalition, Los Angeles

There is much more to know about participatory defense. For more information, please go to:  
[www.participatorydefense.org](http://www.participatorydefense.org) or [siliconvalleydebug.org](http://siliconvalleydebug.org)

*“Silicon Valley De-Bug worked with a client’s Spanish speaking mother to gather and organize relevant documents that would have otherwise been difficult to obtain like the youth’s school and special education records, his medical records and family court orders that captured the difficult upbringing he endured. We used these materials in mitigation and ultimately negotiated a favorable disposition for our young client.”*

—Sajid Khan, Santa Clara County  
Alternate Defender

*“A defender approached De-Bug about how to support the family of a youth in San Mateo County with an enormous support network that included their church – more than 20 people came to each court appearance, even when there were continuances. Working together, the family and De-Bug created a social biography packet to demonstrate the young person’s current and future prospects. We obtained letters that detailed his current participation at church and sports, but also demonstrated the opportunities that were available to him. Not only were his original felony charges dropped, but he was offered a chance at Deferred Entry of Judgment – which he successfully completed. Most importantly, we were able to keep him out of juvenile hall during a time when he might have been turned over to ICE for immigration proceedings – regardless of the outcome of the case. This young man did not have to do any time inside juvenile hall and was able to preserve his immigration relief. He is now a DACA recipient. ”*

—Silicon Valley De-Bug

## AT THE TRANSFER HEARING: STANDARDS FOR THE JUDGE

At the transfer hearing, the court must consider the probation officer's social study and any other evidence presented.<sup>13</sup> The prosecution goes first because it is the party that wants the youth to be transferred. Normally, the defense and the prosecutor will have submitted briefs making the points they want the judge to know about, and often including letters, reports, studies and other supporting papers. Also, both sides are permitted to bring witnesses, that is, people who can talk about issues the judge needs to know about to decide about transfer. These may be people who know the young person or have worked with him or her. They may also be psychologists, teachers or others who have examined the young person and are considered experts on issues such as disabilities, trauma, gang involvement or mental health issues. They may also be people who know about what services are available in juvenile institutions.

Most transfer cases involve charges for which the law allows the public to be admitted to the courtroom, but the court has the discretion to exclude the public in certain kinds of cases or situations.<sup>14</sup> Also, the alleged victim(s) in the case may attend with a support person, but again, the court has discretion to exclude them in certain circumstances. Normally, witnesses wait in the hallway and are called into the courtroom when it is their turn to testify, but families may be able to get permission for some family members to be present by asking the attorney to make the necessary arrangements.

At the hearing, the prosecutor must prove by a "preponderance of evidence," that the young person should be transferred. That means that the prosecutor must show that, if the evidence on both sides were put on a scale, the scale would tip more toward the prosecutor's side – that the evidence would tip at least 51% toward transfer. The judge decides this by looking at the totality of the evidence. Even though prosecutors often argue that the fact the young person is charged with a very serious crime is enough to tip the balance toward requiring transfer, that is not true. The judge looks at all of the evidence, and the nature of the offense is only one of many factors to be considered.

## TIPS FOR FAMILIES AT THE TRANSFER HEARING

There are rules for everything in the courtroom, including where you sit, where you can walk, and when you can talk.

## COURTROOM TIPS

- Understand the courtroom layout and where to sit
- Prepare/practice with the defense attorney to be a witness
- Be prepared for difficult questions & cross-examination
- Be aware that others can hear you and see your body language
- Take notes and write down your questions. Even if you may not understand what people are saying, just write them down
- Come to court early
- Let the defense attorney know who is coming to support your loved one so that the court can let them in

In most courtrooms, the judge sits on an elevated bench above the rest of the room. In front of the judge are tables – normally one on the right and one on the left, often with a podium in the middle. The situation is different in every county, but a typical setup is that there is a designated table for the prosecution and for the defense. There are usually two or three chairs for each side, and sometimes the lawyers will ask their investigator or social worker to be at the table with them. In many courtrooms there is a row behind the counsel tables for witnesses who will be called. Behind that there are usually chairs or benches for other people. If you do not know where to sit, you can ask the defense attorney or bailiff.

On one side of the judge's bench is a court reporter, who types every word that is said in the hearing to make a written transcript – a record of the hearing. The court reporter may ask for spelling of names or other information

<sup>13</sup> For the exact wording of what the judge must consider, go to Welfare and Institutions Code section 707 in the Blue Pages.

<sup>14</sup> Go to the Blue Pages for the text of California Welfare and Institutions Code section 676 on admission of the public to juvenile court hearings, and section 676.5 on the victims' right to be present.



about witnesses. Right below the judge's bench and in front of the court reporter is the witness stand. That is where you will go if you are called as a witness. On the other side of the bench there is a court clerk, who keeps records of what happened in hearings and the court's orders. In the back of the courtroom there is a bailiff – normally a Sheriff's Department employee who is there to keep order in the courtroom, bring people who are detained into the courtroom, and sometimes to call people who are waiting in the hallway to be called to testify. It is very important never to walk into the space between the counsel table and the judge's bench. This is called the "well" of the court, and even the attorneys are only allowed to walk there with the permission of the judge to "approach the bench." If you are called to the witness stand, you should go around the side of the tables to reach it.

If you are going to be called to testify at the transfer hearing, it is very important for you to work with the attorney ahead of time to be prepared for the questions you will be asked. You need to be aware ahead of time if you will be asked about things that are highly personal or uncomfortable to talk about. You need to think about how to answer difficult questions. Because the prosecutor will have an opportunity to cross-examine you (ask you questions after the defense attorney finishes), you also need to practice how to respond to the kinds of questions that can be expected. Answer only the question that was asked, and do not volunteer additional information. Also know that when you take the witness stand, you will be asked to take an oath that you will tell the truth, and if it is later discovered that you did not, you could be subject to penalties for perjury. If the judge asks you a question directly, answer respectfully and address him or her as "Your Honor."

Whether or not you will be called as a witness, it is important to realize that everything about you is visible to others in the courtroom: how you dress, your body language, your whispered comments to others – all of this can be seen by the judge, probation and the prosecutor.

Take notes on things that are said or things you observe during the hearing. That will help you to remember what you want to remember or talk about later. It also gives you a way to deal with hearing things that are upsetting or that seem wrong without causing a disruption in the hearing.



At the end of the hearing, the court must decide whether the young person should be transferred based on the "totality of the circumstances."<sup>15</sup> This means that the judge must consider all of the evidence on all of the transfer criteria. The question is whether, based on all of the five criteria, the youth can be rehabilitated in the juvenile court system. The fact that the case involves a serious offense, standing alone, is not decisive. If the court orders that the young person be transferred, it must give its reasons, and those must be included in the official record of the hearing.<sup>16</sup>

Be prepared for good news or bad news. If it is good news, it is all right to smile or show relief, but do not celebrate in the courtroom. Leave the courtroom quietly and respectfully. But be prepared for things going the other way. No matter how good the arguments are for keeping your child in juvenile court, and no matter how well the defense presented the case against transfer, the decision may not go as you had hoped. If that happens, try not to show how upset you are in the courtroom. Know that you will be able to talk to the defense lawyer immediately after you leave the courtroom, or if that is not possible that you can schedule a meeting to discuss what has happened.

<sup>15</sup> For language on the transfer standard to be used, go to the Blue Pages, California Rules of Court, rule 5.770(b), and Advisory Committee statement.

<sup>16</sup> For the language on what the court must record, go to the Blue Pages, California Rules of Court, rule 5.770(c).



## After the Transfer Hearing

If the court orders that your child be transferred to the adult system, the attorney will need to decide whether there are legal issues that could convince a Court of Appeal to say that the juvenile court was wrong in ordering transfer. If the attorney believes that legal issues exist, a petition for writ of mandate must be filed within 20 days of the “arraignment” hearing (the first court hearing where the charges are read to the young person) in adult court.<sup>17</sup>

The petition for a writ of mandate asks a Court of Appeal to reverse the order of the juvenile court and to enter an order that the young person be allowed to stay in juvenile court. It is very difficult to win writs because the Court of Appeal normally presumes that the lower court heard all the evidence and made a correct decision. It will only reverse a lower court order if it was “an abuse of discretion,” and that is often very hard to show. Sometimes the appellate process can take a very long time, so it is important to ask the lawyer if he or she will be handling the writ or if someone else will be handling the appellate matter. If another attorney will be handling the writ, have the attorney provide you the contact information for that attorney so you can follow up with the attorney who will be litigating the matter in the Court of Appeal.

Even if the case goes forward in adult court, there can be good news. Having a good record of what happened in the transfer hearing may help the lawyer in adult court to get a better plea bargain offer. In some cases, too, the process of investigating for a transfer hearing reveals weaknesses in the prosecution case. This may help the defense if the case goes to trial.

Whether the court orders transfer or not, the case is not over. If the court denies the transfer motion so your child will stay in juvenile court, that is good news, but the case goes back to the beginning in juvenile court. The attorney will begin to prepare for adjudication (trial) as if the transfer case had never happened, though he or she will be much better prepared because of the investigation for the transfer proceeding. Even if there is an admission to the charges or if the judge finds that the young person committed the charges in an adjudication (trial), having the extensive information developed for the transfer hearing may help in getting a good juvenile court disposition.

*“When the family of a youth who was 15 years-old at the time of crime was transferred to adult court, the family didn’t want to give up. His juvenile defender decided he was going to file a writ to challenge the decision of the judge. The family and their De-Bug supporters took notes every day of the transfer hearing, and those notes provided the necessary information and observations that the juvenile defender needed to be able to support the writ. The juvenile defender also received feedback from the Pacific Juvenile Defender Center as the writ was drafted. The writ is now pending in the Court of Appeal.”*

—Silicon Valley De-Bug

<sup>17</sup> Go to the Blue Pages for the text of California Rules of Court, rule 5.770(g).





## Supporting Youth in the Transfer Process

We understand that many people reading this guide will not need assistance with how to support their loved one facing transfer. However, some families, due to previous trauma, fear of the judicial system, unfamiliarity with the court system, or anxiety about the pending transfer case may appreciate receiving guidance on how best to help the young person. Here are some tips:

- When possible visit your child at the juvenile facility, and if your schedule does not permit frequent visits, many youths have told us how much they love it when their family and friends write letters (but remember that probation staff could read the letters so do not discuss the transfer case);
- Be aware that communications at juvenile hall or the jail may not be confidential. Please do not talk about the facts of the case when visiting your child in detention;
- Even if you are upset about your child's involvement in the case, try to meet their emotional needs. Some youth may need constant reassurance that you will be there for them no matter what happens with the transfer hearing;
- If you notice changes in your child, such as depression, cutting, injuries, or other behavior that concerns you about their well-being, let their attorney know immediately;
- Encourage your child to participate in juvenile hall programs and to do their best in the facility school. These are things the court will look at closely in deciding if the young person can be rehabilitated, so they should do as well as they can;
- Sometimes, visits can be very uncomfortable, and parents do all the talking to fill in the spaces. It is important to listen, even if there are quiet moments.
- Ask about the facility rules so you are clear as to what items you can give your child when you visit and what items are not permitted.

*"De-Bug took photos of each residence and neighborhood and created a multimedia presentation that we admitted into evidence; it beautifully illustrated my client's tale and breathed life into his biography, helping us demand that the Judge see his context and not just his conduct"*

*—Sajid Khan, Santa Clara County Alternate Defender*

## Definitions/Common Terms

**AB12/Nonminor Dependent Status** – these are terms you might find in court records or probation reports. They are benefits for youth who had foster care aid and/or placement orders (dependency and juvenile justice) on their 18th birthday, thus qualifying them for financial assistance until their 21st birthday. “NMD” is a common acronym used for Nonminor Dependent. “AB 12” refers to the legislation that enacted these provisions. Having this status can be helpful to arguments that there are strong support systems if the youth stays in juvenile court.

**Adjudication** – the equivalent of trial in juvenile court. In California, there is no right to a jury trial, but the standard of proof to sustain a juvenile court petition is the same as for adults - beyond a reasonable doubt. Some judges and courts also refer to this as a jurisdictional hearing.

**Admission** – this is the equivalent of a guilty plea in adult court.

**Arraignment** – arraignment is the first hearing in the adult criminal court. It is the hearing at which the judge formally reads the charges and the defendant enters a plea of guilty or not guilty. This is the hearing that triggers the 20-day period for filing a writ to challenge an order that the young person be transferred to adult court. In most counties, the young person will be assigned a different attorney in adult court than they had in juvenile court.

**Camp** – this is a category of facilities offered by the local probation department as a disposition in juvenile court (Welf. & Inst. Code, § 880 et seq.) Not every county offers camps. For purposes of time credits, camps are considered secure facilities. (§ 726.) In transfer cases, camp placements may surface in records of previous delinquent history.

**Crossover Youth** – this refers to youth who were in the dependency system but have committed an offense which now places them in the juvenile justice system. Some courts also refer to these youth as “Dual Jurisdiction” youth. In transfer cases, records of youth in this status may appear in probation reports, and they can be important for the defense.

**Deny/Denial** – this is equivalent in juvenile court of a “Not Guilty” plea in adult court.

**Detention Report** – this is a report completed by the probation department detailing the reasons they detained a youth pending his/her court appearance. In transfer cases, “facts” from detention reports are sometimes used in probation social studies.

**Developmental Disability** – this refers to a certain kind of disability. Under the law, it originates before a person reaches age 18, can be expected to continue indefinitely, and constitutes a substantial disability for that individual. It includes intellectual disabilities (formerly called mental retardation), cerebral palsy, epilepsy, and autism, as well as disabling conditions found to be closely related to intellectual disabilities.

**Developmental Immaturity** – this is a concept used to describing the differences in multiple areas of functioning between adolescence and adulthood, including cognitive, behavioral, emotional, and social development. It may relate to competence, capacity to commit a crime and intent to commit a crime (also known as mens rea), and may be relevant to several of the transfer criteria.

**Direct File** – prior to the passage of Proposition 57, this term referred to the power of a prosecutor to file certain offenses directly in adult court. Proposition 57 took away this power, and cases now may be transferred to adult court only after a judicial transfer hearing pursuant to Welfare and Institutions Code section 707.

**Disposition** – this is the juvenile court’s equivalent of sentencing.

**Disposition Report** – in some counties the “social study” required for disposition is referred to as a disposition report; it is generated after adjudication/trial. Statements from disposition reports sometimes appear in the transfer social study report.

**DJF/DJJ/CYA** - Division of Juvenile Facilities (DJF), sometimes referred to as Department of Juvenile Justice (DJJ), and formerly known as the California Youth Authority (CYA). This is “prison” for the youth of California, and the Division resides in the Department of Corrections and Rehabilitation. (§ 1710.)

**Dual Jurisdiction** – if the county is a dual jurisdiction county by virtue of having developed a protocol pursuant to Welfare and Institutions Code § 241.1, dual status allows youth to be in both the dependency and juvenile justice systems at the same time. This status may be referenced in probation social study reports.

**Electronic Monitoring** (CDP/JEM/GPS) – this refers to juvenile court programs of supervision in which the youth must wear an ankle bracelet and must remain confined to the home except for school, court, and medical appointments as ordered by the court. Pre-adjudication, the proper term is “Home Supervision,” pursuant to Welfare and Institutions Code § 628.1. Some counties refer to juvenile electronic monitoring as “CDP” (Community Detention Program). Other counties use “JEM” (Juvenile Electronic Monitoring) or “GPS.” In transfer cases, electronic monitoring may surface in descriptions of previous delinquent history.

**Felony** – this is the term for the most serious category of crimes. In the adult system, felonies are punishable by death or imprisonment in state prison, though they could also be punished by imprisonment in a county jail or probation, and fines or restitution. In juvenile court, felonies are used to determine maximum confinement time, even though the juvenile dispositional scheme is otherwise quite different and broader than the adult sentencing scheme.

**Foster Care** -- residential care provided in any setting authorized by Welfare and Institutions Code, section 11402, including an approved relative’s home, a licensed foster home, a licensed group home, the home of a legal guardian, and a licensed transitional housing placement facility (§§ 727.4(d)(1), 11402). Foster care may be



mentioned in transfer cases in relation family history or in relation to past placements. Foster care may be ordered in child welfare cases as well as juvenile justice cases, so it may be important to determine which kind of proceeding it occurred in.

**“Fit,” or “fitness”** – until Proposition 57 was enacted in 2016, the court decided whether a person was “fit” or “unfit” to stay in juvenile court, and the hearings were called “fitness” hearings. This was a very negative sounding term, and it has been replaced by the term “transfer.”

**Home on Probation (HOP)** - this means the youth has been declared a ward of the court but has not been removed from the home. This term may appear in the probation officer’s social study report in relation to past delinquent history.

**IEP (Individualized Education Program)** – this is the document that governs what happens to young people who are eligible for special education services under the Individuals with Disabilities Education Act. It is developed, reviewed and revised in a meeting in accordance with Education Code, § 56345 and applicable federal laws. It is very useful in transfer cases because it has information about the young person’s disabilities, the impact of disabilities on functioning in the school setting, and the services that are needed to help the young person to benefit from their education.

**Informal Probation (or “654”)** – this is a pre-plea diversion program pursuant to Welfare and Institutions Code § 654 under which a youth must abide by certain conditions for a six-month period and if he or she successful, the petition is dismissed at the end of that period. This may appear in the probation officer’s social study report in relation to past delinquent history.

**JACI – Juvenile Adjudicative Competency Interview** – this is an assessment tool used by psychologists and psychiatrists to determine the competency of youth to be adjudicated. It may appear in expert reports and may have relevant information about the young person’s level of functioning.

**Jurisdictional Hearing** – see the definition of Adjudication.

**Level 14 Facility** – under long term law, this was a high-level group home providing intensive psychiatric services for youth identified as severely emotionally disturbed and who met additional criteria (Welf. & Inst. Code, § 11462.01). This placement category will be phased out as a result of AB 403 (Stats. 2015, ch.773), which substantially revised California’s group home system, including the level system. When AB 403 is fully implemented, there will be a single licensing category to be known as **Short Term Residential Treatment Centers (STRTC)**. These placements will offer an equivalent of level 14 care with a high emphasis on mental health treatment. However, probation officer social study reports may use the old terminology.

**Miranda Rights** – these are the rights the United States Supreme Court recognized in *Miranda v. Arizona*, 384 U.S. 436 (1966). They include warnings that you have right to remain silent; that anything you say can and will be used against you in a court of law; that you have the right to have an attorney present before or during any questioning;

and that if you cannot afford one, an attorney must be appointed free of charge. Unless a person in custody is given these warnings and gives up their *Miranda* rights, any statement or confession they make cannot be used against them in court.

**Non-Wardship Disposition** (See §§ 654, 654.2, 725(a), 790) – Generally these are programs of informal probation for a designated amount of time. No formal declaration of wardship has occurred. Each has its own rules for eligibility, terms and conditions, and procedures for failure to comply with terms and conditions. They may appear in the record of previous delinquent history in the probation officer’s social study.

**Petition** – this is the equivalent of a “complaint” in adult court. The petitions are generally filed by the local prosecuting agency. They contain basic information about the alleged offense and the charges against the young person.

**Placement/ Suitable Placement** – this is when the court removes the youth from home and places him/her in a group home or treatment facility pursuant to Welfare and Institutions Code, § 726 et seq. (including foster care, group home, non-family placement, family placement in certain counties.) This category of placement is normally considered non-secure. Past placements may be talked about in the probation officer’s social study.

**Prima Facie Showing** – even though guilt of the alleged offense(s) is assumed at transfer hearings, California Rules of Court, rule 5.766(a) (1) allows the defense to request a prima facie showing that the offense alleged is an offense that makes the young person subject to transfer. This is not a full trial, but defense counsel can question the preparers of arrest reports. If the prima facie showing is not made, counsel can request dismissal of the transfer motion.

**Probation Officer’s Social Study** – Welfare and Institutions Code, § 707(a)(1) requires the court to order the probation officer to submit a report on the behavioral patterns and social history of the minor. The report must include any written or oral statement offered by the victim. The report must be considered at the transfer hearing.

**Prosecutor** – this is the person who files the case and the transfer hearing motion against the youth. Normally, this person works for the office of the district attorney in the county.

**Ranch** – this refers to a wardship disposition available in some counties under Welfare and Institutions Code, § 880. Ranches are treated the same as camps in the Welfare and Institutions Code, and are considered secure.

**Regional Center** – this refers to the agency that serves people with developmental disabilities in California. Youth determined eligible are entitled to a range of services and placement through regional centers.

**Sealing** – certain juvenile offenses are eligible for sealing, meaning the juvenile court and police records are destroyed and the youth can report that the arrest and case did not occur. Sealing laws have changed dramatically in the past several years, so it is important to go



directly to the statutes (e.g., Welf. & Inst Code, § 781) when trying to understand the rules. If a case has been sealed, the attorney can ask that it not be considered in the transfer hearing.

**SIJS** – Special Immigrant Juvenile Status. This term could come up in social study reports. It is an immigration status that gives certain children who have been subject to state juvenile court proceedings related to abuse, neglect, or abandonment, the ability to seek lawful permanent residence in the United States.

**SILP** – Supervised Independent Living Placement. The Supervised Independent Living Placement (SILP) is one of the placement options for youth participating in extended foster care. Of all placement options available, the SILP provides the greatest amount of autonomy. It is not a licensed placement, but is approved by the young person's social worker or probation officer.

**Social “Bio” Packet** – this is a term used by participatory defense hubs to describe a tool they develop to engage families in changing the way a person facing charges is perceived and understood. With the assistance of participatory defense hubs, families create social bio packets (letters, records, certificates, photos, and other supporting documents) that the defense can use in transfer hearings to help the court understand the challenges and trauma their loved ones have faced and continue to face, identify future prospects and aspirations, and gather support for the person. It can be used to develop testimony for the transfer hearing and information for the transfer brief.

**Sustained Petition/Petition is Not True** – these are the terms used instead of “guilty” and “not guilty” in juvenile court. If court finds that a youth who is alleged to have committed a crime did in fact commit it (either by adjudication or admission), the court “sustains” the petition. It is the equivalent of “guilty.” Likewise, should the youth prevail, the petition is found “not true.”

**Transfer** – this refers to a motion filed by the prosecution when they want to prosecute a youth in adult court. The court will conduct a “Transfer Hearing” to determine whether the youth is amenable to continued juvenile court treatment when measured against statutory criteria in Welfare and Institutions Code, §707.

**Wardship** – this is the term used when the court formally places the youth in the juvenile system. The wardship declaration occurs at disposition. The result is that the youth is under the care, custody and control of the probation department, and the court may make a variety of placement or probation orders and impose a series of additional conditions on the youth.

**Writ** – a writ is an order from a higher court commanding a lower court to change its ruling. In transfer cases, this is done by filing a petition for writ of mandate in the Court of Appeal asking for a writ to be issued ordering the juvenile court to set aside its order transferring the case to criminal court, and issuing a new order for the case to remain in juvenile court.

## Commonly Encountered Juvenile Court Terms Using Numbers

The next group of terms refers to the number of the statute (law) in the Welfare and Institutions Code:

**241.1 Report** – this report is for youth who are in both the dependency and juvenile justice systems. The report must be a joint report of both agencies to determine the best disposition for the youth's case.

**300 Ward** – this refers to a youth who has had a formal declaration of wardship in dependency court based on abuse or neglect and has been placed under the care, custody and control of the county department of child welfare.

**601 Ward** – this refers to a youth who has had a formal declaration of wardship either because the youth was a “habitual truant” or an “incorrigible.” The term “incorrigible” means that the youth has been found to be habitually disobedient to the reasonable and proper orders of directions of parents and guardians, and is beyond the control of parents or guardians.

**602 Ward** – this status refers to the fact that the youth has had a formal declaration of wardship in the juvenile court, and that the youth has had a sustained petition for a criminal offense.

**707(b) Offense** – this refers to the list of offenses under Welfare and Institutions Code section 707, subdivision (b). This list is important because it can be the basis for eligibility for transfer, juvenile strikes, eligibility for DJF, and whether an offense is sealable or not.

**777** (sometimes called “Triple 7”) – this refers to the Welfare and Institutions Code section 777 which allows the prosecutor or the probation department to allege that a probation violation has occurred.

**782** – this section provides for a motion to dismiss in the interest of justice. This motion may be filed at any time, even after juvenile court jurisdiction has terminated.

**827** – this section addresses the rules on access to juvenile court records. It is often used to obtain confidential juvenile court records of individuals who are either witnesses or victims in a case.

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### Welfare and Institutions Code

#### Section 634.3

(a) Counsel appointed pursuant to Section 634 to represent youth in proceedings under Sections 601 and 602 shall do all of the following:

- (1) Provide effective, competent, diligent, and conscientious advocacy and make rational and informed decisions founded on adequate investigation and preparation.

- (2) Provide legal representation based on the client's expressed interests, and maintain a confidential relationship with the minor.

- (3) Confer with the minor prior to each court hearing, and have sufficient contact with the minor to establish and maintain a meaningful and professional attorney-client relationship, including in the postdispositional phase.

- (4) When appropriate, delinquency attorneys should consult with social workers, mental health professionals, educators, and other experts reasonably necessary for the preparation of the minor's case, and, when appropriate, seek appointment of those experts pursuant to Sections 730 and 952 of the Evidence Code.

- (5) Nothing in this subdivision shall be construed to modify the role of counsel pursuant to subdivision (b) of Section 657.

(b) By July 1, 2016, the Judicial Council, in consultation and collaboration with delinquency defense attorneys, judges, and other justice partners including child development experts, shall adopt rules of court to do all of the following:

- (1) Establish minimum hours of training and education, or sufficient recent experience in delinquency proceedings in which the attorney has demonstrated competence, necessary in order to be appointed as counsel in delinquency proceedings. Training hours that the State Bar has approved for Minimum Continuing Legal Education (MCLE) credit shall be counted toward the MCLE hours required of all attorneys by the State Bar.

- (2) Establish required training areas that may include, but are not limited to, an overview of juvenile delinquency law and procedure, child and adolescent development, special education, competence and mental health issues, counsel's ethical duties, advocacy in the postdispositional phase, appellate issues, direct and collateral consequences of court involvement for a minor, and securing effective rehabilitative resources.

- (3) Encourage public defender offices and agencies that provide representation in proceedings under Sections 601 and 602 to provide training on juvenile delinquency issues that the State Bar has approved for MCLE credit.

- (4) Provide that attorneys practicing in juvenile delinquency courts shall be solely responsible for compliance with the training and education requirements adopted pursuant to this section.

(Copied from Westlaw Aug. 2, 2018)

### Welfare and Institutions Code

#### Section 676

(a) Unless requested by the minor concerning whom the petition has been filed and any parent or guardian present, the public shall not be admitted to a juvenile court hearing. Nothing in this section shall preclude the attendance of up to two family members of a prosecuting witness for the support of that witness, as authorized by Section 868.5 of the Penal Code. The judge or referee may nevertheless admit those persons he or she deems to have a direct and legitimate interest in the particular case or the work of the court. However, except as provided

in subdivision (b), members of the public shall be admitted, on the same basis as they may be admitted to trials in a court of criminal jurisdiction, to hearings concerning petitions filed pursuant to Section 602 alleging that a minor is a person described in Section 602 by reason of the violation of any one of the following offenses:

- (1) Murder.

- (2) Arson of an inhabited building.

- (3) Robbery while armed with a dangerous or deadly weapon.

- (4) Rape with force or violence, threat of great bodily harm, or when the person is prevented from resisting due to being rendered unconscious by any intoxicating, anesthetizing, or controlled substance, or when the victim is at the time incapable, because of a disability, of giving consent, and this is known or reasonably should be known to the person committing the offense.

- (5) Sodomy by force, violence, duress, menace, threat of great bodily harm, or when the person is prevented from resisting due to being rendered unconscious by any intoxicating, anesthetizing, or controlled substance, or when the victim is at the time incapable, because of a disability, of giving consent, and this is known or reasonably should be known to the person committing the offense.

- (6) Oral copulation by force, violence, duress, menace, threat of great bodily harm, or when the person is prevented from resisting due to being rendered unconscious by any intoxicating, anesthetizing, or controlled substance, or when the victim is at the time incapable, because of a disability, of giving consent, and this is known or reasonably should be known to the person committing the offense.

- (7) Any offense specified in subdivision (a) or (e) of Section 289 of the Penal Code.

- (8) Kidnapping for ransom.

- (9) Kidnapping for purpose of robbery.

- (10) Kidnapping with bodily harm.

- (11) Assault with intent to murder or attempted murder.

- (12) Assault with a firearm or destructive device.

- (13) Assault by any means of force likely to produce great bodily injury.

- (14) Discharge of a firearm into an inhabited dwelling or occupied building.

- (15) Any offense described in Section 1203.09 of the Penal Code.

- (16) Any offense described in Section 12022.5 or 12022.53 of the Penal Code.

- (17) Any felony offense in which a minor personally used a weapon described in any provision listed in Section 16590 of the Penal Code.

- (18) Burglary of an inhabited dwelling house or trailer coach, as defined in Section 635 of the Vehicle Code, or the inhabited portion of any other building, if the minor previously has been adjudged a ward of the court by reason of the commission of any offense listed in this section, including an offense listed in this paragraph.

- (19) Any felony offense described in Section 136.1 or 137 of the Penal Code.

- (20) Any offense as specified in Sections 11351, 11351.5, 11352, 11378, 11378.5, 11379, and 11379.5 of the Health and Safety Code.

- (21) Criminal street gang activity which constitutes a felony pursuant to Section 186.22 of the Penal Code.

- (22) Manslaughter as specified in Section 192 of the Penal Code.

- (23) Driveby shooting or discharge of a weapon from or at a motor vehicle as specified in Sections 246, 247, and 26100 of the Penal Code.

- (24) Any crime committed with an assault weapon, as defined in

Section 30510 of the Penal Code, including possession of an assault weapon as specified in Section 30605 of the Penal Code.

(25) Carjacking, while armed with a dangerous or deadly weapon.

(26) Kidnapping, in violation of Section 209.5 of the Penal Code.

(27) Torture, as described in Sections 206 and 206.1 of the Penal Code.

(28) Aggravated mayhem, in violation of Section 205 of the Penal Code.

(b) Where the petition filed alleges that the minor is a person described in Section 602 by reason of the commission of rape with force or violence or great bodily harm; sodomy by force, violence, duress, menace, threat of great bodily harm, or when the person is prevented from resisting by any intoxicating, anesthetizing, or controlled substance, or when the victim is at the time incapable, because of mental disorder or developmental or physical disability, of giving consent, and this is known or reasonably should be known to the person committing the offense; oral copulation by force, violence, duress, menace, threat of great bodily harm, or when the person is prevented from resisting by any intoxicating, anesthetizing, or controlled substance, or when the victim is at the time incapable, because of mental disorder or developmental or physical disability, of giving consent, and this is known or reasonably should be known to the person committing the offense; any offense specified in Section 289 of the Penal Code, members of the public shall not be admitted to the hearing in either of the following instances:

(1) Upon a motion for a closed hearing by the district attorney, who shall make the motion if so requested by the victim.

(2) During the victim's testimony, if, at the time of the offense the victim was under 16 years of age.

(c) The name of a minor found to have committed one of the offenses listed in subdivision (a) shall not be confidential, unless the court, for good cause, so orders. As used in this subdivision, "good cause" shall be limited to protecting the personal safety of the minor, a victim, or a member of the public. The court shall make a written finding, on the record, explaining why good cause exists to make the name of the minor confidential.

(d) Notwithstanding Sections 827 and 828 and subject to subdivisions (e) and (f), when a petition is sustained for any offense listed in subdivision (a), the charging petition, the minutes of the proceeding, and the orders of adjudication and disposition of the court that are contained in the court file shall be available for public inspection. Nothing in this subdivision shall be construed to authorize public access to any other documents in the court file.

(e) The probation officer or any party may petition the juvenile court to prohibit disclosure to the public of any file or record. The juvenile court shall prohibit the disclosure if it appears that the harm to the minor, victims, witnesses, or public from the public disclosure outweighs the benefit of public knowledge. However, the court shall not prohibit disclosure for the benefit of the minor unless the court makes a written finding that the reason for the prohibition is to protect the safety of the minor.

(f) Nothing in this section shall be applied to limit the disclosure of information as otherwise provided for by law.

(g) The juvenile court shall for each day that the court is in session, post in a conspicuous place which is accessible to the general public, a written list of hearings that are open to the general public pursuant to this section, the location of those hearings, and the time when the hearings will be held.

(Copied from Westlaw Aug. 2, 2018)

## **Welfare and Institutions Code**

**Section 676.5** (a) Notwithstanding any other law, and except as provided in subdivision (d), a victim and up to two support persons of the victim's choosing shall be entitled to be admitted, on the same basis as he or she may be admitted to trials in a court of criminal jurisdiction, to juvenile court hearings concerning petitions filed pursuant to Section 602 alleging the commission of any criminal offense, and shall be so notified by the probation officer in person or by registered mail, return receipt requested, together with a notice explaining all other rights and services available to the victim with respect to the case.

(b) A victim or his or her support person may be excluded from a juvenile court hearing described in subdivision (a) only if each of the following criteria are met:

(1) Any movant, including the minor defendant, who seeks to exclude the victim or his or her support person from a hearing demonstrates that there is a substantial probability that overriding interests will be prejudiced by the presence of the victim or his or her support person.

(2) The court considers reasonable alternatives to exclusion of the victim or his or her support person from the hearing.

(3) The exclusion of the victim or his or her support person from a hearing, or any limitation on his or her presence at a hearing, is narrowly tailored to serve the overriding interests identified by the movant.

(4) Following a hearing at which any person who is to be excluded from a juvenile court hearing is afforded an opportunity to be heard, the court makes specific factual findings that support the exclusion of the victim or his or her support person from, or any limitation on his or her presence at, the juvenile court hearing.

(c) As used in this section, "victim" means (1) the alleged victim of the offense and one person of his or her choosing or however many more the court may allow under the particular circumstances surrounding the proceeding, (2) in the event that the victim is unable to attend the proceeding, two persons designated by the victim or however many more the court may allow under the particular circumstances surrounding the proceeding, or (3) if the victim is no longer living, two members of the victim's immediate family or however many more the court may allow under the particular circumstances surrounding the proceeding.

(d) Nothing in this section shall prevent a court from excluding a victim or his or her support person from a hearing, pursuant to Section 777 of the Evidence Code, when the victim is subpoenaed as a witness. An order of exclusion shall be consistent with the objectives of paragraphs (1) to (4), inclusive, of subdivision (b) to allow the victim to be present, whenever possible, at all hearings.

(Copied from Westlaw Aug. 2, 2018)

## **Welfare and Institutions Code**

**Section 707 (Note: This is the law effective January 1, 2019, with the changes made through S.B. 1391, Stats. 2018.)**

707. (a) (1) In any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any offense listed in subdivision (b) or any other felony criminal statute, the district attorney or other appropriate prosecuting officer may make a motion to transfer the minor from juvenile court to a court of criminal jurisdiction. The motion shall be made prior to the attachment of jeopardy. Upon the motion, the juvenile court shall order the probation officer to submit a



report on the behavioral patterns and social history of the minor. The report shall include any written or oral statement offered by the victim pursuant to Section 656.2.

(2) In any case in which an individual is alleged to be a person described in Section 602 by reason of the violation, when he or she was 14 or 15 years of age, of any offense listed in subdivision (b), but was not apprehended prior to the end of juvenile court jurisdiction, the district attorney or other appropriate prosecuting officer may make a motion to transfer the individual from juvenile court to a court of criminal jurisdiction. The motion shall be made prior to the attachment of jeopardy. Upon the motion, the juvenile court shall order the probation officer to submit a report on the behavioral patterns and social history of the individual. The report shall include any written or oral statement offered by the victim pursuant to Section 656.2.

(3) Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the juvenile court shall decide whether the minor should be transferred to a court of criminal jurisdiction. In making its decision, the court shall consider the criteria specified in subparagraphs (A) to (E), inclusive. If the court orders a transfer of jurisdiction, the court shall recite the basis for its decision in an order entered upon the minutes. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the transfer hearing, and a plea that has been entered already shall not constitute evidence at the hearing.

(A) (i) The degree of criminal sophistication exhibited by the minor.  
(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's family and community environment and childhood trauma on the minor's criminal sophistication.

(B) (i) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's potential to grow and mature.

(C) (i) The minor's previous delinquent history.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the seriousness of the minor's previous delinquent history and the effect of the minor's family and community environment and childhood trauma on the minor's previous delinquent behavior.

(D) (i) Success of previous attempts by the juvenile court to rehabilitate the minor.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the adequacy of the services previously provided to address the minor's needs.

(E) (i) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm

actually caused by the person, and the person's mental and emotional development.

(b) This subdivision is applicable to any case in which a minor is alleged to be a person described in Section 602 by reason of the violation of one of the following offenses:

(1) Murder.

(2) Arson, as provided in subdivision (a) or (b) of Section 451 of the Penal Code.

(3) Robbery.

(4) Rape with force, violence, or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) A lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.

(7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(8) An offense specified in subdivision (a) of Section 289 of the Penal Code.

(9) Kidnapping for ransom.

(10) Kidnapping for purposes of robbery.

(11) Kidnapping with bodily harm.

(12) Attempted murder.

(13) Assault with a firearm or destructive device.

(14) Assault by any means of force likely to produce great bodily injury.

(15) Discharge of a firearm into an inhabited or occupied building.

(16) An offense described in Section 1203.09 of the Penal Code.

(17) An offense described in Section 12022.5 or 12022.53 of the Penal Code.

(18) A felony offense in which the minor personally used a weapon described in any provision listed in Section 16590 of the Penal Code.

(19) A felony offense described in Section 136.1 or 137 of the Penal Code.

(20) Manufacturing, compounding, or selling one-half ounce or more of a salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.

(21) A violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, which also would constitute a felony violation of subdivision (b) of Section 186.22 of the Penal Code.

(22) Escape, by the use of force or violence, from a county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 if great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.

(23) Torture as described in Sections 206 and 206.1 of the Penal Code.

(24) Aggravated mayhem, as described in Section 205 of the Penal Code.

(25) Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.

(26) Kidnapping for purposes of sexual assault, as punishable in subdivision (b) of Section 209 of the Penal Code.

(27) Kidnapping as punishable in Section 209.5 of the Penal Code.

(28) The offense described in subdivision (c) of Section 26100 of the Penal Code.

(29) The offense described in Section 18745 of the Penal Code.

(30) Voluntary manslaughter, as described in subdivision (a) of Section 192 of the Penal Code.

(Copied from S.B. 1391 as enacted, California legislative web site October 1, 2018.)

# California Rules of Court

## Rule 5.766. General provisions

### (a) Hearing on transfer of jurisdiction to criminal court (§ 707)

A child who is the subject of a petition under section 602 and who was 14 years or older at the time of the alleged felony offense may be considered for prosecution under the general law in a court of criminal jurisdiction. The district attorney or other appropriate prosecuting officer may make a motion to transfer the child from juvenile court to a court of criminal jurisdiction, in one of the following circumstances:

- (1) The child was 14 years or older at the time of the alleged offense listed in section 707(b).
- (2) The child was 16 years or older at the time of the alleged felony offense.

*(Subd (a) amended effective May 22, 2017; previously amended effective January 1, 1996, and January 1, 2001.)*

### (b) Notice (§ 707)

Notice of the transfer hearing must be given at least five judicial days before the hearing. In no case may notice be given following the attachment of jeopardy.

*(Subd (b) amended effective May 22, 2017; previously amended effective January 1, 2007.)*

### (c) Prima facie showing

On the child's motion, the court must determine whether a prima facie showing has been made that the offense alleged is an offense that makes the child subject to transfer as set forth in subdivision (a).

*(Subd (c) adopted effective May 22, 2017.)*

### (d) Time of transfer hearing—rules 5.774, 5.776

The transfer of jurisdiction hearing must be held and the court must rule on the request to transfer jurisdiction before the jurisdiction hearing begins. Absent a continuance under rule 5.776 or the child's waiver of the statutory time period to commence the jurisdiction hearing, the jurisdiction hearing must begin within the time limits under rule 5.774.

*(Subd (d) amended and relettered effective May 22, 2017; adopted as subd (c); previously amended effective January 1, 2007.)*

*Rule 5.766 amended effective May 22, 2017; adopted as rule 1486 effective January 1, 1991; previously amended and renumbered effective January 1, 2007.*

## Rule 5.768. Report of probation officer

### (a) Contents of report (§ 707)

The probation officer must prepare and submit to the court a report on the behavioral patterns and social history of the child being considered. The report must include information relevant to the determination of whether the child should be retained under the jurisdiction of the juvenile court or transferred to the jurisdiction of the criminal court, including information regarding all of the criteria in section 707(a)(2). The report must also include any written or oral statement offered by the victim pursuant to section 656.2.

*(Subd (a) amended effective May 22, 2017; previously amended effective January 1, 2007.)*

### (b) Recommendation of probation officer (§§ 281, 707)

If the court, under section 281, orders the probation officer to include a recommendation, the probation officer must make a recommendation to the court as to whether the child should be retained under the jurisdiction of the juvenile court or transferred to the jurisdiction of the criminal court.

*(Subd (b) amended effective May 22, 2017; previously amended effective January 1, 2007.)*

### (c) Copies furnished

The probation officer's report on the behavioral patterns and social history of the child must be furnished to the child, the parent or guardian, and all counsel at least two court days before commencement of the hearing on the motion. A continuance of at least 24 hours must be granted on the request of any party who has not been furnished the probation officer's report in accordance with this rule.

*(Subd (c) amended effective May 22, 2017; previously amended effective January 1, 2007.)*

*Rule 5.768 amended effective May 22, 2017; adopted as rule 1481 effective January 1, 1991; previously amended and renumbered effective January 1, 2007.*

## Rule 5.770. Conduct of transfer of jurisdiction hearing under section 707

### (a) Burden of proof (§ 707)

In a transfer of jurisdiction hearing under section 707, the burden of proving that there should be a transfer of jurisdiction to criminal court jurisdiction is on the petitioner, by a preponderance of the evidence.

*(Subd (a) amended effective May 22, 2017; previously amended effective January 1, 1996, January 1, 2001, and July 1, 2002.)*

## **(b) Criteria to consider (§ 707)**

Following receipt of the probation officer's report and any other relevant evidence, the court may order that the child be transferred to the jurisdiction of the criminal court if the court finds:

- (1) The child was 16 years or older at the time of any alleged felony offense, or the child was 14 or 15 years at the time of an alleged felony offense listed in section 707(b); and
- (2) The child should be transferred to the jurisdiction of the criminal court based on an evaluation of all of the criteria in section 707(a)(2) as provided in that section.

*(Subd (b) amended effective May 22, 2017; adopted as subd (b); previously amended and relettered as subd (c) effective January 1, 1996; previously amended and relettered effective January 1, 2001; previously amended effective January 1, 2007.)*

## **(c) Basis for order of transfer**

If the court orders a transfer of jurisdiction to the criminal court, the court must recite the basis for its decision in an order entered on the minutes.

*(Subd (c) amended effective May 22, 2017; adopted as subd (c); previously amended and relettered as subd (d) effective January 1, 1996; amended and relettered effective January 1, 2001; previously amended effective July 1, 2002, and January 1, 2007.)*

## **(d) Procedure following findings**

- (1) If the court finds the child should be retained within the jurisdiction of the juvenile court, the court must proceed to jurisdiction hearing under rule 5.774.
- (2) If the court finds the child should be transferred to the jurisdiction of the criminal court, the court must make orders under section 707.1 relating to bail and to the appropriate facility for the custody of the child, or release on own recognizance pending prosecution. The court must set a date for the child to appear in criminal court and dismiss the petition without prejudice upon the date of that appearance.
- (3) When the court rules on the request to transfer the child to the jurisdiction of the criminal court, the court must advise all parties present that appellate review of the order must be by petition for extraordinary writ. The advisement may be given orally or in writing when the court makes the ruling. The advisement must include the time for filing the petition for extraordinary writ as set forth in subdivision (g) of this rule.

*(Subd (d) relettered and amended effective May 22, 2017; adopted as subd (d); previously relettered as subd (g) effective January 1, 1996, and as subd (f) effective January 1, 2001; previously amended effective July 1, 2002, and January 1, 2007.)*

## **(e) Continuance to seek review**

If the prosecuting attorney informs the court orally or in writing that a review of the court's decision not to transfer jurisdiction to the criminal court will be sought and requests a continuance of the jurisdiction hearing, the court must grant a continuance for not less than two judicial days to allow time within which to obtain a stay of further proceedings from the reviewing judge or appellate court.

*(Subd (e) relettered and amended effective May 22, 2017; adopted as subd (e); previously relettered as subd (h) effective January 1, 1996, and as subd (g) effective January 1, 2001; previously amended effective July 1, 2002, and January 1, 2007.)*

## **(f) Subsequent role of judicial officer**

Unless the child objects, the judicial officer who has conducted a hearing on a motion to transfer jurisdiction may participate in any subsequent contested jurisdiction hearing relating to the same offense.

*(Subd (f) relettered and amended effective May 22, 2017; adopted as subd (f); relettered as subd (i) effective January 1, 1996; previously amended and relettered as subd (h) effective January 1, 2001.)*

## **(g) Review of determination on a motion to transfer jurisdiction to criminal court**

An order granting or denying a motion to transfer jurisdiction of a child to the criminal court is not an appealable order. Appellate review of the order is by petition for extraordinary writ. Any petition for review of a judge's order to transfer jurisdiction of the child to the criminal court, or denying an application for rehearing of the referee's determination to transfer jurisdiction of the child to the criminal court, must be filed no later than 20 days after the child's first arraignment on an accusatory pleading based on the allegations that led to the transfer of jurisdiction order.

*(Subd (g) relettered and amended effective May 22, 2017; adopted as subd (g); previously relettered as subd (j) effective January 1, 1996; amended and relettered effective January 1, 2001; previously amended as subd (i) effective July 1, 2002.)*

## **(h) Postponement of plea prior to transfer hearing**

If a hearing for transfer of jurisdiction has been noticed under section 707, the court must postpone the taking of a plea to the petition until the conclusion of the transfer hearing, and no pleas that may have been entered already may be considered as evidence at the hearing.

*(Subd (h) adopted effective May 22, 2017.)*

*Rule 5.770 amended effective May 22, 2017; adopted as rule 1482 effective January 1, 1991; previously amended effective January 1, 1996, January 1, 2001, and July 1, 2002; previously amended and renumbered effective January 1, 2007.*



## Advisory Committee Comment

**Subdivision (b).** This subdivision reflects changes to section 707 as a result of the passage of Senate Bill 382 (Lara; Stats. 2015, ch. 234) and Proposition 57, the Public Safety and Rehabilitation Act of 2016. SB 382 was intended to clarify the factors for the juvenile court to consider when determining whether a case should be transferred to criminal court by emphasizing the unique developmental characteristics of children and their prior interactions with the juvenile justice system. Proposition 57 provided that its intent was to promote rehabilitation for juveniles and prevent them from reoffending, and to ensure that a judge makes the determination that a child should be

tried in a criminal court. Consistent with this intent, the committee urges juvenile courts-when evaluating the statutory criteria to determine if transfer is appropriate-to look at the totality of the circumstances, taking into account the specific statutory language guiding the court in its consideration of the criteria.

**Subdivision (c).** While this rule and section 707 only require the juvenile court to recite the basis for its decision when the transfer motion is granted, the advisory committee believes that juvenile courts should, as a best practice, state the basis for their decisions on these motions in all cases so that the parties have an adequate record from which to seek subsequent review.



