

CALIFORNIA JUDGES BENCHGUIDES

Benchguide 117

**JUVENILE DELINQUENCY
TRANSFER OF JURISDICTION
HEARING**



**JUDICIAL COUNCIL
OF CALIFORNIA**

OPERATIONS AND PROGRAMS DIVISION
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JUVENILE DELINQUENCY TRANSFER OF JURISDICTION HEARING

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I. [§117.1] SCOPE OF BENCHGUIDE

This benchguide covers transfer of jurisdiction hearings in juvenile court held generally under Welf & I C §707 and Cal Rules of Ct 5.766–5.770. The benchguide includes a procedural checklist, a brief summary of the applicable law, and appendices.

BULLETIN: The Public Safety and Rehabilitation Act of 2016 (hereafter Proposition 57) significantly changed the procedures governing the transfer of juveniles from juvenile to adult criminal court. Judges are advised to carefully review the new transfer procedures as they differ significantly from the former fitness hearing procedures.

Please note that all case law cited in this benchguide predates the passage of Proposition 57 and interprets the application of the former fitness hearing procedure. The continued viability of these cases and statutory provisions relating to transfer that were left unmodified by Proposition 57 is subject to future interpretation by the courts.

II. [§117.2] PROCEDURAL CHECKLIST

The transfer of jurisdiction hearing is triggered by the prosecutor's filing of a motion to transfer the child from juvenile court to adult criminal court. The motion must be filed in the juvenile court at any time prior to the attachment of jeopardy.

(1) *Attorneys serving as temporary judges should obtain a stipulation from the parties under Cal Rules of Ct 2.816. If desired, referees should also obtain a written stipulation from the parties to serve as temporary judges. See discussion in §117.10.*

(2) *Review the file to ensure that the probation report on the behavioral patterns and social history of the child has been timely filed.*

(3) *Ask the bailiff, court clerk, or probation officer to call the case.*

(4) *Determine who is present and their interest in the case before the court.* Welf & I C §§676, 676.5, 679; Cal Rules of Ct 5.530(b), (e). The judge may be asked to rule on the presence of the following in the courtroom:

- Interpreters for parent and/or child (see California Judges Benchguide 116: *Juvenile Delinquency Initial or Detention Hearing* §116.16 (Cal CJER)).
- Crime victims and their support persons (see §116.10).
- Family members or other support persons for prosecuting witnesses (see §116.12).
- Child's family members (see §116.12).
- Media (see §116.15).
- Public (see §§116.13–116.14).
- Court-appointed special advocate (CASA) (see §116.11). There may also be agency workers from the mental health agency, department of health services, or other agencies.

(5) *State that the court has read and carefully reviewed the probation report.*

(6) *Request and receive any comments or evidence from the prosecutor in support of a motion to transfer the child to adult criminal court.* The prosecutor must establish that there should be a transfer by a preponderance of the evidence.

(7) *Request and receive any comments or evidence from the defendant or defense counsel on the issue of transfer to adult criminal court.* Allow counsel to answer or rebut the contents of the probation report and/or other information considered by the court.

(8) *On the child's motion, determine whether the prosecution has made a prima facie case that the alleged offense is a felony that makes the defendant subject to transfer.* If child aged 16 or over at time of offense, any felony will qualify. If child aged 14 or 15 at time of offense, felony must be listed in Welf & I C §707(b). See [§117.14](#).

(9) *Determine whether the child should be transferred to the jurisdiction of the criminal court.* In making its decision, the court must consider all of the following criteria (Welf & I C §707(a)(2)(A)–(E)):

- The degree of criminal sophistication exhibited by the child.
- Whether the child can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.
- The child's previous delinquent history.

- Success of previous juvenile court attempts to rehabilitate the child.
- Circumstances and gravity of the offense.

(10) *If transfer of the child is ordered:*

- Make the following findings:
 - The child was 16 years of age or older at the time of any alleged felony offense or the child was 14 or 15 years old at the time of an alleged felony offense listed in Welf & I C §707(b).
 - The child should be transferred to the jurisdiction of the criminal court based on the evaluation of five transfer criteria contained in Welf & I C §707(a)(2)(A)–(E). See §117.17.
- Recite the basis for the court’s decision in an order entered on the minutes. Cal Rules of Ct 5.770(c). See §117.18.
- Advise all parties that appellate review of the transfer order must be by petition for extraordinary writ. The advisement must include the time for filing the petition set forth in Cal Rules of Ct 5.770(g). Cal Rules of Ct 5.770(d)(3). (*Note:* In alternative, this advisement may be provided in writing). See §117.19.
- Make the following additional orders (Welf & I C §707.1(b)(4); Cal Rules of Ct 5.770(d)(2)):
 - Detain the child in juvenile hall or the county jail and set bail if appropriate; or
 - Release the child on his or her own recognizance or to the custody of an adult if the child should not remain in custody.
 - Set date for the child to appear in criminal court and dismiss the petition without prejudice on the date of that appearance. See §117.18.

(11) *If the court finds that the child should be retained within the jurisdiction of the juvenile court:*

- Acknowledge that the court has considered all five transfer criteria contained in Welf & I C §707(a)(2)(A)–(E).
- Recite the basis for the court’s decision in an order entered on the minutes. See §117.18.
- Advise all parties of the appellate review process. Cal Rules of Ct 5.770(d)(3). See §117.19.
- Set date of the jurisdiction hearing under Cal Rules of Ct 5.774. Cal Rules of Ct 5.770(d)(1).

III. APPLICABLE LAW

A. [§117.3] Nature of Transfer of Jurisdiction Hearing

Proposition 57, passed by the electorate in 2016, provides that a juvenile court judge, not a prosecutor, determines whether children as young as 14 years of age may be prosecuted and sentenced as adults. Proposition 57 repealed the authority of prosecutors to charge children directly in adult criminal court, and eliminated the concepts of fitness, unfitness, and amenability that were critical to the former fitness hearing procedures. Before a child can be transferred to adult court, that child must have a hearing in juvenile court to determine whether the child should be transferred to adult criminal court. As a result, the only way a youth can be tried as an adult is if the juvenile court judge in the hearing decides to transfer the youth to adult criminal court.

B. [§117.4] Transfer Criteria

In determining whether a minor should be transferred to the jurisdiction of the criminal court, the court must consider the following five criteria (Welf & I C §707(a)(2); Cal Rules of Ct 5.770(b)(2)):

- ***The degree of criminal sophistication exhibited by the child.*** When evaluating this criteria, the court may give weight to any relevant factor, including, but not limited to:
 - The child's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense;
 - The child's impetuosity or failure to appreciate risks and consequences of criminal behavior;
 - The effect of familial, adult, or peer pressure on the child's actions; and
 - The effect of the child's family and community environment and childhood trauma on the child's criminal sophistication.
- ***Whether the child can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.*** When evaluating this criterion, the court may give weight to any relevant factor, including, but not limited to, the child's potential to grow and mature.
- ***The child's previous delinquent history.*** When evaluating this criteria, the court may give weight to any relevant factor, including, but not limited to:
 - The seriousness of the child's previous delinquent history; and

- The effect of the child’s family and community environment and childhood trauma on the child’s previous delinquent behavior.
- ***The success of previous attempts by the juvenile court to rehabilitate the child.*** When evaluating this criteria, the 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.
- ***The circumstances and gravity of the offense alleged in the petition to have been committed by the child.*** When evaluating this criterion the court may give weight to any relevant factor, including, but not limited to:
 - The actual behavior of the child;
 - The mental state of the child;
 - The child’s degree of involvement in the crime;
 - The level of harm actually caused by the child; and
 - The child’s mental and emotional development.

➤ **JUDICIAL TIP:** When evaluating the statutory criteria to determine if transfer is appropriate, juvenile courts should look at the totality of the circumstances, taking into account the specific language guiding the court in its consideration of the criteria. Advisory Committee Comment to Cal Rules of Ct 5.770.

C. [§117.5] Children Subject to Transfer

A motion for transfer of jurisdiction to an adult criminal court may be brought against the following children (Welf & I C §707(a)(1)):

- A child who was 16 years of age or older at the time of an alleged felony offense; and
- A child who was 14 or 15 years of age at the time of an alleged felony offense listed on Welf & I C §707(b).

D. [§117.6] Initiating the Transfer of Jurisdiction Hearing

The prosecution initiates the transfer proceeding by bringing a motion to transfer a child from juvenile court to the court of criminal jurisdiction. The motion may be made at any time prior to the attachment of jeopardy. Welf & I C §707(a)(1). Notice of the transfer of jurisdiction hearing must be given at least 5 judicial days before the hearing. In no

case may notice be given following the attachment of jeopardy. Cal Rules of Ct 5.766(b).

Generally, only the prosecutor may initiate a transfer of jurisdiction hearing. See *In re Rodney F.* (1988) 203 CA3d 177, 184, 249 CR 424. The court may initiate a transfer hearing, however, when a child seeks to waive juvenile court jurisdiction or even when an adult who was a child at the time of the alleged offense attempts a waiver. 203 CA3d at 184–185. In addition, because the transfer hearing is the only mechanism for transferring a case from juvenile to adult court, when an adult who was a juvenile at the time of the offense seeks a waiver, it is as if that person has initiated a transfer hearing. See *Joey W. v Superior Court* (1992) 7 CA4th 1167, 1173–1174, 9 CR2d 486.

Once the transfer of jurisdiction hearing has been noticed under Welf & I C §707, the court must postpone the taking of a plea to the petition until the conclusion of the transfer hearing, and no pleas that have already been entered may be considered as evidence at the hearing. Welf & I C §707(a)(2); Cal Rules of Ct 5.770(h).

E. Time Limitations for Transfer of Jurisdiction Hearing

1. [§117.7] In General

The transfer of jurisdiction hearing must be held and the court must rule on the transfer request before the jurisdiction hearing is held. Cal Rules of Ct 5.766(d). If the child is not detained, the jurisdiction hearing must begin within 30 calendar days from the date the petition was filed. If the child is detained, the jurisdiction hearing must be held within 15 judicial days of the date of the detention order. Welf & I C §657(a); Cal Rules of Ct 5.766(d), 5.774(a). If the child is released from custody before the jurisdiction hearing, the court may reset the jurisdiction hearing within 30 calendar days from the date the petition was filed. Cal Rules of Ct 5.774(b). Attorneys will often waive time for the jurisdiction hearing to permit preparation for the transfer hearing.

2. [§117.8] Continuances

A transfer of jurisdiction hearing may be continued beyond the required time limit only on a showing of good cause and only for the period that is absolutely necessary by the moving party. Welf & I C §682(b); Cal Rules of Ct 5.776(a). Neither stipulation between counsel or parties nor convenience of parties will constitute good cause in and of itself. Welf & I C §682(b); Cal Rules of Ct 5.776(a). If a party seeking a continuance fails to comply with the requirements of Welf & I C §682(a) (notice filed and served at least 2 days before the hearing to be continued), the court must deny the motion for the continuance unless that party has

shown good cause for failing to meet the procedural requirements. Welf & I C §682(c); Cal Rules of Ct 5.776(a).

The order for the continuance must state the facts requiring the continuance. Welf & I C §682(b); Cal Rules of Ct 5.776(a). If the child is represented by counsel and neither the child nor child's counsel objects to an order continuing a hearing beyond the time limit, this nonobjection is deemed to be a consent to the continuance. Welf & I C §682(d); Cal Rules of Ct 5.776(a). Once continued, the hearing must begin on the continuation date or within 7 days thereafter when the court is satisfied that there is good cause for the continuance and the party seeking the continuance will be prepared to proceed within that time. Welf & I C §682(e).

- **JUDICIAL TIP:** When considering a continuance of a transfer hearing, the court must delicately balance the minor's due process rights with the need for swift adjudication to allow time for rehabilitation. Arguably, it is the minor's most important hearing, considering the substantial disparity of confinement time possible between juvenile and adult adjudication. Counsel may seek lengthy continuances to prepare expert witnesses as to the transfer criteria. Conversely, time is of the essence especially in serious cases, because rehabilitation through the Department of Juvenile Justice is subject to an age cap of 23 years of age or a 2-year period of control. Welf & I C §§607(f), 1769(c).

F. [§117.9] Probation Report

On a motion to transfer jurisdiction, the court must require the probation department to prepare and submit a report containing the following (Welf & I C §707(a)(1); Cal Rules of Ct 5.768(a)):

- Information on the behavioral patterns and social history of the child;
- Information relevant to the determination of whether or not the child should be retained under juvenile court jurisdiction or transferred to criminal court jurisdiction, including information regarding all five criteria in Welf & I C §707(a)(2)(A)–(E) (see [§117.4](#)); and
- Any written or oral statement offered by a victim under Welf & I C §656.2.

If the court 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. Welf & I C §281; Cal Rules of Ct 5.768(b).

The probation report must be furnished to the child, the parent or guardian, and all counsel at least 2 court days before the hearing is scheduled to begin. A continuance of at least 24 hours must be granted on the request of any party who has not been timely furnished with the report Cal Rules of Ct 5.768(c).

G. Conducting Transfer of Jurisdiction Hearing

1. [§117.10] Hearing Officers

The transfer of jurisdiction hearing, like all juvenile court hearings, may be conducted by referees or by superior court commissioners who are assigned to sit as referees. See Cal Rules of Ct 5.536. Although a referee may not preside over a jurisdiction hearing without a stipulation (*In re Perrone C.* (1979) 26 C3d 49, 57, 160 CR 704), that requirement does not apply to a transfer of jurisdiction hearing because jeopardy does not attach. *Charles R. v Superior Court* (1980) 110 CA3d 945, 957, 168 CR 284. It is always advisable, however, for the referee to obtain a stipulation and indeed must do so if the referee is to have all the powers of a juvenile court judge under Cal Const art VI, §21. Cal Rules of Ct 5.536(b).

For a general discussion of powers of referees and commissioners, see California Judges Benchguide 116: *Juvenile Delinquency Initial or Detention Hearing* §116.7 (Cal CJER).

2. [§117.11] Public Access to Hearing

The transfer of jurisdiction hearing, as with any delinquency hearing, must generally be closed to the public and heard at a separate session of the court. Welf & I C §675(a); Cal Rules of Ct 5.530(a). However, when the petition alleges that the child has committed one of the crimes listed in Welf & I C §676, the hearing must be open to the same extent, and on the same basis, as an adult criminal trial. Welf & I C §676(a). See discussion of public access to delinquency proceedings in California Judges Benchguide 116: *Juvenile Delinquency Initial or Detention Hearing* §116.13–116.14 (Cal CJER).

3. Presentation of Evidence

a. [§117.12] In General

No published opinion has considered the applicability of the Rules of Evidence to transfer hearings under Proposition 57. However, the purpose of a Proposition 57 transfer hearing is similar to the old “fitness” hearing,

and therefore the underlying rationale for admitting hearsay evidence in a fitness hearing most likely applies to transfer hearings as well.

In *People v Chi Ko Wong* (1976) 18 C3d 698, 717, 135 CR 392, overruled on other grounds in 27 C3d 1, 28, the California Supreme Court addressed the nature of evidence that a court may consider in a fitness hearing:

It is clear that the very nature of the fitness hearing precludes imposition of strict evidentiary standards. As the issue therein is not whether the minor committed a specified act, but rather whether he is amenable to the care, treatment and training program available through juvenile court facilities, it is manifest that a finding of fitness or unfitness is largely a subjective determination based on hearsay and opinion evidence.

Indeed, at a transfer hearing, the court must consider the behavioral patterns and social history of the child as contained in the probation report (see §117.9) and any other evidence that the prosecutor or child wishes to submit. See Welf & I C §707(a)(1), (2); Cal Rules of Ct 5.770(b). The report may include “a wide assortment of hearsay, opinion evidence, evidence of prior offenses, school reports, and other miscellaneous information.” *People v Chi Ko Wong*, *supra*, 18 C3d at 718.

The Court in *Chi Ko Wong* cautioned that the juvenile court judge’s exercise of judicial discretion to receive and consider evidence presented in the probation report is not unbridled, but rather is limited to consideration of evidence that is material and relevant. 18 C3d at 719.

b. [§117.13] Burden of Proof

In a transfer of jurisdiction hearing, the prosecutor must prove that there should be a transfer of jurisdiction to criminal court jurisdiction by a preponderance of the evidence. Cal Rules of Ct 5.770(a).

c. [§117.14] Prima Facie Case

On the child’s motion, the court must determine whether prosecutor has made a prima facie showing that the alleged offense is an offense that makes the child subject to transfer as set forth in Cal Rules of Ct 5.766(a). Cal Rules of Ct 5.766(c). Prima facie means “at first view” and is evidence that suffices for the proof of a particular fact until the contrary is shown. *In re Raymond G.* (1991) 230 CA3d 964, 972, 281 CR 625 (dependency case). The hearing at which this prima facie case must be established may be consolidated with the transfer of jurisdiction hearing. *Marcus W. v Superior Court* (2002) 98 CA4th 36, 41, 118 CR2d 919.

If the child objects to the admission of a confession at the prima facie hearing, the juvenile court has a duty to determine whether the confession was voluntary and not coerced. 98 CA4th at 46. A coerced or involuntary

confession is tainted and would not meet the requirement of being relevant and competent that is basic to a determination of a prima facie case. 98 CA4th at 45.

d. [§117.15] Use of Child's Statements

Statements made by the child to a probation officer in preparation of a transfer hearing are admissible in a transfer proceeding. These statements are not admissible to prove guilt at a later proceeding, whether juvenile adjudication or adult trial. *In re Wayne H.* (1979) 24 C3d 595, 602, 156 CR 344. However, these statements may be used for impeachment purposes at a subsequent trial. *People v Macias* (1997) 16 C4th 739, 757, 66 CR2d 659. Similarly, statements made to retained psychologists in preparation for the transfer hearing are admissible for impeachment purposes at a later trial. *People v Humiston* (1993) 20 CA4th 460, 476, 24 CR2d 515.

The child's statements made during a transfer hearing may not be used as substantive evidence of guilt during a later criminal trial. *Ramona R. v Superior Court* (1985) 37 C3d 802, 808-811, 210 CR 204. The *Ramona R.* decision did not reach the question whether these statements may be used for purposes of impeachment and neither approved or disapproved of the dictum supporting such use in *Sheila O. v Superior Court* (1981) 125 CA3d 812, 817, 178 CR 418. 37 C3d at 807, n2.

e. [§117.16] Statements in Violation of *Miranda*

Statements which are taken in violation of the child's *Miranda* rights (*Miranda v Arizona* (1966) 384 US 436, 86 S Ct 1602, 16 L Ed 2d 694) should be excluded and not considered by the court at a transfer hearing. See *Marcus W. v Superior Court* (2002) 98 CA4th 36, 45, 118 CR2d 919 (under the former fitness hearing procedures, child could move to suppress incriminating statements in violation of *Miranda* offered at a prima facie hearing).

H. [§117.17] Findings and Orders

Following the submission and consideration of the probation report, and of any other relevant evidence that the prosecutor or the minor wishes to submit, the juvenile court must decide whether the minor should be transferred to a court of criminal jurisdiction. Welf & I C §707(b)(a)(2).

The court may order that the child be transferred to the jurisdiction of the criminal court if it finds each of the following (Welf & I C §707(a); Cal Rules of Ct 5.770(b)):

- The child was 16 years of age or older at the time of any alleged felony offense or the child was 14 or 15 years of age at the time of an alleged felony offense listed in Welf & I C §707(b). See *In re Sim J.* (1995) 38

CA4th 94, 97–99, 45 CR2d 30 (misdemeanor cannot be a Welf & I C §707(b) offense).

- The child should be transferred to the jurisdiction of the criminal court based on an evaluation of all of the following criteria listed in Welf & I C §707(a)(2)(A)–(E).

I. [§117.18] Statement of Reasons

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 in the minutes. Welf & I C §707(a)(1); Cal Rules of Ct 5.770(c). A statement of reasons must clearly show the court’s evaluative process in applying the relevant criteria to the facts of the case. *People v Superior Court* (Robert L.) (1989) 213 CA3d 54, 63, 261 CR 303. While mere listing of the criteria may not be sufficient to supports a child’s transfer to criminal court, neither a formal statement nor conventional findings of fact are required: it is sufficient if the court’s reasons are set out in such a way that the transcript may be susceptible of meaningful review. *Francisco R. v Superior Court* (1980) 114 CA3d 232, 238, 170 CR 572.

☛ JUDICIAL TIPS:

- While Welf & I C §707(a)(1) and Cal Rules of Ct 5.770(c) only require the juvenile court to recite the basis for its decision when the transfer motion is granted, juvenile courts should, as a best practice, state the basis for their decisions in all cases so that the parties have an adequate record from which to seek subsequent review. Advisory Committee Comment to Cal Rules of Ct 5.770.
- Because the court must make a record of its evaluative process it may be helpful to use a ruling worksheet which includes the transfer criteria, and can be filled in with facts by the judge during the evidentiary hearing. See Appendix B, Transfer Hearing Script/Worksheet.
- The Court may use Judicial Council Form, *Order To Transfer Juvenile to Criminal Court Jurisdiction* (JV-710) to set out the required findings and orders.

J. [§117.19] Procedures Following Findings

Retention of child. If the court finds that the child should be retained within the jurisdiction of the juvenile court, the court must proceed to the jurisdiction hearing under Cal Rules of Ct 5.774. Cal Rules of Ct 5.770(d)(1).

Transfer of child. If the finds the child should be transferred to the jurisdiction of the criminal court, the court must make orders relating to

bail under Welf & I C §707.1 and to the appropriate facility for the custody of the child, or release the child on his or her own-recognizance pending prosecution. The court must set a date for the child to appear in criminal court, and dismiss the petition without prejudice on the date of that appearance. Cal Rules of Ct 5.770(d)(2).

Appellate review advisement. 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 petition for extraordinary writ. The advisement may be given orally or in writing when the court makes the ruling, and must include the time for filing the petition for extraordinary writ as set forth in and Cal Rules of Ct 5.770(g). Cal Rules of Ct 5.770(d)(3). See §117.21.

K. [§117.20] Subsequent Role of Judge

Unless the child objects, the judge who has conducted a transfer of jurisdiction hearing may participate in any subsequent contested jurisdiction hearing relating to the same offense. Cal Rules of Ct 5.770(f). See also *In re James D.* (1981) 118 CA3d 810, 815-818, 172 CR 321 (judge presiding over former fitness hearing may conduct jurisdiction hearing absent objection).

L. [§117.21] Review of Transfer Order

Order to retain jurisdiction in juvenile court. An order that the child not be transferred to the jurisdiction of the criminal court is not an appealable order, but may be challenged by extraordinary writ. Cal Rules of Ct 5.770(g). If the prosecutor 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 2 judicial days to allow enough time to obtain a stay of further proceedings from the reviewing judge or appellate court. Cal Rules of Ct 5.770(e).

Order to transfer jurisdiction to criminal court. An order that the child be transferred to the jurisdiction of the criminal court is not an appealable order, but may be challenged by extraordinary writ. Cal Rules of Ct 5.770(g). A petition for review of a judge's order to transfer the child to criminal court must be filed within 20 days of the child's first arraignment on an accusatory pleading based on the allegations that led to the transfer order. Cal Rules of Ct 5.770(g).

M. [§117.22] Effect of Transfer on Prior Adjudication of Wardship

BULLETIN: Welfare & Institutions Code §707.01 was not amended by Proposition 57. An effort has been made to adapt the provisions of the statute to the new transfer of jurisdiction procedures in this section and §117.23. It is hoped the legislature will amend Welf & I C §707.01 in the near future to provide consistency with the new transfer procedures.

The juvenile court does not necessarily lose jurisdiction over the child with respect to an earlier offense after the juvenile court determines that transfer of the child is appropriate. The juvenile court retains jurisdiction with respect to any previous adjudication resulting in the child being made a ward of the juvenile court that did not result in commitment to the DJJ, unless a Welf & I C §785 hearing is held and juvenile court jurisdiction is terminated. Welf & I C §707.01(a)(1). If the child was committed to the DJJ, both the juvenile court and the DJJ retain jurisdiction. Welf & I C §707.01(a)(2).

N. [§117.23] Effect of Transfer on Pending and Subsequent Petitions

Pending petitions. All petitions pending against the child where jeopardy has not attached *must* be transferred to the court of criminal jurisdiction if (Welf & I C §707.01(a)(3)):

- The child was 16 years of age or older at the time of the alleged offense; or
- The alleged offense is one for which the child may be eligible for transfer.

The juvenile court *must* dispose of all petitions pending against the child if (Welf & I C §707.01(a)(4)):

- Jeopardy has attached; or
- The child was 16 years of age or older at the time of the alleged offense for which the child is not eligible for transfer.

Subsequent petitions. If the child is convicted of the predicate offense in the adult criminal court, all subsequent petitions *may* be filed in adult criminal court if (Welf & I C §707.01(a)(5)):

- The child was 16 years of age or older at the time of the alleged offense; or
- The alleged offense is one for which the child may be eligible for transfer.

If the transfer finding was based solely on the child’s previous delinquent history and/or previous unsuccessful attempts by juvenile court to rehabilitate, subsequent petitions *may* be filed in adult criminal court even if the child is not convicted of the predicate offense if (Welf & I C §707.01(a)(6)):

- The child was 16 years of age or older at the time of the alleged offense; or
- The alleged offense is one for which the child may be eligible for transfer.

If the transfer finding was *not* based solely on the child’s previous delinquent history and/or previous unsuccessful attempts by juvenile court to rehabilitate, subsequent petitions *must* be filed in the juvenile court even if the child is not convicted of the predicate offense. Welf & I C §707.01(a)(7).

NOTE: The continued validity of Welf & I C §§707.01(a)(6) and 707.01(a)(7) is now in question. Under the new transfer hearing procedure, the juvenile court judge must consider each of the five transfer criteria outlined in §117.4 in its determination of whether the child should be transferred to a court of criminal jurisdiction. Welf & I C §707(a)(2); Cal Rules of Ct 5.770(b). See also Advisory Committee Comment to Cal Rules of Ct 5.770 (courts urged when evaluating the statutory criteria in Welf & I C §707(a)(2) to look at “the totality of the circumstances, taking into account the specific statutory language guiding the court in its consideration of the criteria”).

O. [§117.24] Retroactive Application of Proposition 57

Proposition 57 applies retroactively to punishment of children whose judgments are not yet final on appeal. *People v Lara* (2018) 4 C5th 299, 228 CR3d 394. In *People v Vela* (2018) 21 CA5th 1099, 1112–1113, 230 CR3d 880, a child was convicted of several serious offenses in adult criminal court but was retroactively entitled to a transfer hearing because the case was not yet final. The *Vela* court stated that the appropriate resolution in such a case is a conditional reversal dependent on the outcome of the juvenile transfer hearing on remand.

When conducting the transfer hearing, the juvenile court must to the extent possible, treat the matter as though the prosecutor had originally filed a juvenile petition in juvenile court and had then moved to transfer the child’s case to a court of criminal jurisdiction. If, after conducting the juvenile transfer hearing, the court determines that it would have transferred the defendant to a court of criminal jurisdiction, then the convictions are reinstated. On the other hand, if the juvenile court finds that it would not have transferred the child to a court of criminal

jurisdiction, then it must treat the child's convictions as juvenile adjudications and impose an appropriate disposition within its discretion. 21 CA5th at 1113.

Appendix A: Enumerated Offenses in Welfare and Institutions Code §707(b)

Offense	Penal Code
Murder	Pen C §187
Arson causing great bodily injury	Pen C §451(a)
Arson of an inhabited building	Pen C §451(b)
Robbery	Pen C §§211, 212.5
Rape with force or violence or threat of great bodily harm	Pen C §261(a)(2)
Sodomy by force, violence, duress, menace, or threat of great bodily harm	Pen C §286(c)(2)(A)–(C), (d)(1)–(3)
Lewd or Lascivious act by force, violence, duress, menace, or fear of immediate and unlawful bodily injury	Pen C §288(b)
Oral copulation by force, violence, duress, menace, or threat of great bodily harm	Pen C §288a(c)(2)(A)–(C), (d)(1)–(3)
Sexual penetration by force, violence, duress, menace, or fear of immediate and unlawful bodily injury	Pen C §289(a)(1)(A)–(C)
Kidnapping for ransom	Pen C §209(a)
Kidnapping for purpose of robbery	Pen C §209(b)
Kidnapping with bodily harm	Pen C §207(a)—when the incident charged includes a Pen C §242 or §245(a)(4) allegation
Attempted murder	Pen C §§664/187
Assault with a firearm	Pen C §245(a)(2)–(3), (b)
Assault with a destructive device	Pen C §§18740, 18745
Assault by any means of force likely to produce great bodily injury	Pen C §245(a)(4)
Discharge of a firearm into an inhabited dwelling or occupied building	Pen C §246

Offense	Penal Code
Certain violent crimes (Pen C §§187, 207, 209, 209.5, 211, 215, 220, 261(a)(2), 261(a)(6), 262(a)(1), 262(a)(4), 460(a)) involving great bodily injury, as defined in Pen C §12022.7, against a person 60 years of age or older or a person who is blind, paraplegic, quadriplegic, or confined to a wheelchair, or any Pen C §245(a)(1), §243(d), §215, §211, or §203 offense against a person 60 years of age or older	Pen C §1203.09
Personal use of a firearm in the commission or attempted commission of a felony	Felony with Pen C §12022(b), §12022.5, or §12022.53 allegation
Any felony offense in which a minor personally used a weapon listed in Pen C §16590	Felony with Pen C §12022(b) allegation
Felony offense of preventing or dissuading a witness or victim from attending court proceeding or giving testimony	Pen C §136.1
Felony offense of bribing a witness or inducing false testimony	Pen C §137
Manufacturing, compounding, or selling one-half ounce or more of a salt or solution of a controlled substance specified in Health & S C §11055(e) (depressants)	Health & S C §11379.6(a) (manufacture); Health & S C §11379.5(a) (sale)
A violent felony as defined in Pen C §667.5(c) which also would constitute a felony violation of Pen C §186.22(b) relating to criminal street gang activity	
Escape, by use of force or violence, from a county juvenile hall, home, ranch, camp, or forestry camp if great bodily injury is intentionally inflicted on a juvenile facility employee during the commission of the escape	Welf & I C §871(b) with Pen C §12022.7 allegation <i>(Note: Pen C §12022.7 amended in 1995, deleting requirement that defendant act with “ the intent to inflict such injury”)</i>
Torture	Pen C §§206, 206.1
Aggravated mayhem	Pen C §205

Offense	Penal Code
Carjacking while armed with a dangerous or deadly weapon	Pen C §215 with Pen C §12022(a) allegation
Kidnapping for purpose of sexual assault	Pen C §209(b)
Kidnapping in commission of carjacking	Pen C §209.5
Discharging firearm from motor vehicle at another person	Pen C §26100(c)
Exploding destructive device with intent to commit murder	Pen C §18745
Voluntary manslaughter	Pen C §192(a)

In addition, the California appellate courts have found the following offenses are included in Welf & I C §707(b):

- Continuous sexual abuse of a child (Pen C §288.5) (*In re Emilio C.* (2004) 116 CA4th 1058, 1066–1067, 11 CR3d 85).
- Assault with a deadly weapon other than a firearm (Pen C §245(a)(1)) (*In re Pedro C.* (1989) 215 CA3d 174, 182, 263 CR 428).

Appendix B: Transfer Hearing Script/Worksheet

In re (Minor's Name), Case Number: (number)

This matter is on the court's calendar for a ruling after a transfer hearing pursuant to Welf & I C §707(a) and Cal Rules of Court 5.770. The sole issue to be decided is whether this case should remain in juvenile court or be transferred to the court of criminal jurisdiction for further adjudication.

The question of the minor's guilt or innocence is not before the court, nor are affirmative defenses. The facts of the offense are relevant inasmuch as they relate to the transfer criteria.

As a threshold matter, this motion is properly before the court for consideration a transfer to adult court, because

- Pursuant to Welf & I C §707(a)(1), [*name of minor*] was 16 years of age or older at the time of the alleged commission of a felony offense; or
- [*Name of minor*] was 14 or 15 years of age at the time of the alleged commission of an offense listed in Welf & I C §707(b).

Presentation of Evidence

Petitioner bears the burden of proof. The standard of proof is preponderance of the evidence.

The court has considered the arguments of counsel.

The court has considered the following testimony:

- Witness 1:
- Witness 2:
- [*Etc.*]

The court has also read and considered the following documents:

- Probation Officer [*name*]'s transfer report of [*date*].
- The petition filed on [*date*].
- The notice of request to transfer filed by petitioner on [*date*].
- Report of [*expert's name*].
- CV of [*expert's name*].
- Pleadings.
- Transcripts.
- Stipulations.

Counsel, does either side believe that there is evidence before the court that was not just mentioned?

Consideration of Five Transfer Criteria

Under Welf & I C §707(a)(2)(A)–(E), the court is required to weigh the following 5 factors in reaching its decision:

- The degree of criminal sophistication exhibited by the minor.
- Whether the minor can be rehabilitated before juvenile court loses jurisdiction.
- The minor’s previous delinquent history.
- The success of prior attempts at rehabilitating the minor.
- The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

Findings and Orders

The court makes the following findings and orders: The court has independently evaluated whether each criteria weighs against or in favor of transfer. Only after discussing each criteria will the court issue its ruling as to the ultimate issue of transfer.

Notice has been given as required by law.

A. THE DEGREE OF CRIMINAL SOPHISTICATION EXHIBITED BY THE MINOR**Criteria: Welf & I C §707(a)(2)(A)(ii)**

“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.”

Findings: [State facts the court has considered and factual findings in support of ruling.]

Ruling:

- The Petitioner [has/has not] met their burden in regard to this factor.
- This factor mitigates [for/against] transfer to adult court.

B. WHETHER THE MINOR CAN BE REHABILITATED BEFORE THE EXPIRATION OF JURISDICTION**Criteria: Welf & I C §707(a)(2)(B)(ii)**

“Any relevant factor, including, but not limited to, the minor’s potential to grow and mature.”

[Name of minor] is [number] years old. [He/she] was [number] years old when the alleged offense(s) occurred.

Findings: [State facts the court has considered and factual findings in support of ruling.]

Ruling:

If DJJ likely: In light of the seriousness of the charged offenses, the court has determined that DJJ would be an option for [name of minor] if the case remains in the juvenile justice system. Under this scenario, the juvenile court would only have jurisdiction over [him/her] until [he/she] reaches 23 years of age under Welf & I C §1769(c), which is roughly [number] years from now.

[No/The following] evidence was presented as to what rehabilitative services are available at DJJ:

[List evidence of services.]

By operation of law, [name of minor] has to be released on supervised parole 90 to 120 days before jurisdiction ends. Since DJJ's jurisdiction ends in approximately [number] years, this [does/does not] present a timing issue. If these charges are found true, releasing [him/her] in less than [number] years would likely not meet the rehabilitative goals under the juvenile court system.

[or]

The evidence presented establishes that it is likely that [name of minor] can be rehabilitated in the time remaining.

If no DJJ/juvenile hall rehabilitation evidence presented: The people have presented no evidence in regards to DJJ programing, or any potential of rehabilitation in the juvenile hall or the local long-term commitment facility. Since the people have not met there burden on this factor, the Court finds that Factor B mitigates in favor of NOT transferring [name of minor] to adult court.

- The Petitioner [has/has not] met their burden in regard to this factor.
- This factor mitigates [for/against] transfer to adult court.

C. THE MINOR'S PREVIOUS DELINQUENT HISTORY

Criteria: Welf & I C §707 (a)(2)(C)(ii)

“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.”

Findings: *[State facts the court has considered and factual findings in support of ruling.]*

Ruling:

- The Petitioner [has/has not] met their burden in regard to this factor.
- This factor mitigates [for/against] transfer to adult court.

D. THE SUCCESS OF PREVIOUS ATTEMPTS OF THE JUVENILE COURT TO REHABILITATE THE MINOR

Criteria: Welf & I C 707 (a)(2)(D)(ii)

“Any relevant factor, including, but not limited to, the adequacy of the services previously provided to address the minor’s needs.”

Findings: *[State facts the court has considered and factual findings in support of ruling.]*

Ruling:

- The Petitioner [has/has not] met their burden in regard to this factor.
- This factor mitigates [for/against] transfer to adult court.

E. THE CIRCUMSTANCES AND GRAVITY OF THE OFFENSE ALLEGED IN THE PETITION

Criteria: Welf & I C 707(a)(2)(E)(ii)

“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.”

Findings: *[State facts the court has considered and factual findings in support of ruling.]*

Ruling:

- The Petitioner [has/has not] met their burden in regard to this factor.
 - This factor mitigates [for/against] transfer to adult court.
-

Based upon all the foregoing reasons, the court finds that [*name of minor*] should be [retained within the jurisdiction of the juvenile court/transferred to the jurisdiction of the criminal court].

The court also finds that [*name of minor*] was under the age of 18 at the time of the alleged criminal offenses. [He/She] was [*number*] years old at the time.

The court rules that the matter [will/will not] be transferred to adult criminal court.

[If not transferred:]

[*Name of minor*] is currently housed at [Juvenile Hall/County Jail]. [He/She] is ordered to [remain housed at Juvenile Hall/be transferred to the County Jail] where [he/she] shall remain without bail pending further order of the court.

The matter is set for a [jurisdiction hearing/pretrial hearing] [with/without] a time waiver.

Petitioner's appellate rights: Pursuant to Cal Rules of Court 5.770(d)(3), (e) and (g), [*name of petitioner*] has the right to appeal the court's decision by extraordinary writ. If [*name of petitioner*] requests a continuance, the Court will grant a continuance of not less than two judicial days to allow time for [him/her] to obtain a stay of further proceedings from a reviewing court.

If this is a previously direct-filed case: The court will reserve on the issue of dismissing the adult complaint until after the Petitioner has considered its appellate options.

SO ORDERED.

[If transferred:]

Bail is set at \$[*number*] per the bail schedule

[*Name of minor*] is currently housed at [Juvenile Hall/County Jail]. [He/She] is ordered [to be transported to the county jail/to remain housed at juvenile hall] until [he/she] posts bail or further order of the court. (Or, [*name of minor*] is released on [his/her] own recognizance).

The court orders that the sheriff's department transport [*name of minor*] to Department [*number*] of the Superior Court on [*date*].

Minor's appellate rights: Pursuant to Cal Rules of Court 5.770(d)(3) and (g), [*name of minor*] has the right to appeal the court's decision by extraordinary writ. The petition for writ must be filed within 20 days of the date of [his/her] first arraignment in adult court.

At the arraignment in adult court, the juvenile petition will be dismissed.

SO ORDERED.

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