
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 2361 **Hearing Date:** June 21, 2022
Author: Mia Bonta
Version: March 31, 2022
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Juveniles: transfer to court of criminal jurisdiction*

HISTORY

Source: California Public Defenders Association
Pacific Juvenile Defender Center

Prior Legislation: AB 624 (Bauer-Kahan), Ch. 195, Stats. 2021
AB 1423 (Wicks), Ch. 583, Stats. 2019
AB 2865 (Wicks), not heard due to COVID-19
SB 439 (Mitchell), Ch. 1006, Stats. 2018
SB 1391 (Lara), Ch. 1012, Stats. 2018
Proposition 57, as approved by the voters on November 8, 2016
SB 382 (Lara), Ch. 234, Stats. 2015
AB 560 (Peace), Ch. 453, Stats. 1994
SB 332, Ch. 1616, Stats. 1961

Support: Asian Prisoner Support Committee; California Alliance for Youth and Community Justice; California Attorneys for Criminal Justice; California Catholic Conference; Californians for Safety and Justice; Center on Juvenile and Criminal Justice; Communities United for Restorative Youth Justice; East Bay Community Law Center; Ella Baker Center for Human Rights; Fresh Lifelines for Youth; Fresno Barrios Unidos; Fresno County Public Defender's Office; Friends Committee on Legislation of California; Immigrant Legal Resource Center; Initiate Justice; Motivating Individual Leadership for Public Advancement; National Association of Social Workers, California Chapter; National Center for Lesbian Rights; National Center for Youth Law; Services, Immigration Rights and Education Network; Silicon Valley De-Bug; Sister Warriors Freedom Coalition; The Gathering for Justice; W. Haywood Burns Institute; Young Women's Freedom Center; Youth Alive!

Opposition: None known

Assembly Floor Vote: 54 - 19

PURPOSE

The purpose of this bill is to require the juvenile court to find by clear and convincing evidence that the minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court in order to transfer the minor to a court of criminal jurisdiction.

Existing law provides that, any minor who is between 12 and 17 years of age that violates any law of this state or of the United States or any ordinance of any city or county other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, and may be adjudged to be a ward of the court. (Welf. & Inst. Code, § 602, subd. (a).)

Existing law authorizes the prosecutor to make a motion to transfer a minor who is 16 years of age or older from juvenile court to a court of criminal jurisdiction in any case in which the minor is alleged to have committed a felony. (Welf. & Inst. Code, § 707, subd. (a)(1).)

Existing law authorizes the prosecutor to make a motion to transfer a minor who committed a specified serious or violent felony from juvenile court to a court of criminal jurisdiction if the offence was committed while the minor was 14 or 15 years of age or older but the minor was not apprehended prior to the end of juvenile court jurisdiction. (Welf. & Inst. Code, § 707, subd. (a)(2).)

Existing law requires, upon the motion of the prosecutor, the juvenile court to order the probation officer to submit a report on the behavioral patterns and social history of the minor. (Welf. & Inst. Code, § 707, subd. (a)(1) & (2).)

Existing law requires the juvenile court, following submission and consideration of the report, and of any other relevant evidence that the minor may wish to submit, to decide whether the minor should be transferred to a court of criminal jurisdiction. (Welf. & Inst. Code, § 707, subd. (a)(3).)

Existing law requires the juvenile court, in making its decision, to consider specified criteria including:

- The degree of criminal sophistication exhibited by the minor. 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;
- Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction. The juvenile court may give weight to any relevant factor, including, but not limited to, the minor's potential to grow and mature;
- The minor's previous delinquent history. 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;
- Success of previous attempts by the juvenile court to rehabilitate the minor. 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; and,
- The circumstances and gravity of the offense alleged to have been committed by the minor. 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. (Welf. & Inst. Code, § 707, subd. (a)(3)(A)-(E).)

Existing law requires, if the juvenile court orders a transfer to a court of criminal jurisdiction, the court to recite the basis for its decision in an order entered upon the minutes. (Welf. & Inst. Code, § 707, subd. (a)(3).)

Existing law authorizes, if the minor's case is transferred from juvenile court to a court of criminal jurisdiction, the prosecutor to file an accusatory pleading against the minor in a court of criminal jurisdiction. The case shall proceed from that point according to the laws applicable to a criminal case. (Welf. & Inst. Code, § 707.1.)

Existing law allows a court to commit a minor to the Division of Juvenile Justice (DJJ), within the California Department of Corrections and Rehabilitation (CDCR), if the minor committed a specified serious, violent, or sex offense and has been the subject of a motion filed to transfer the minor to the jurisdiction of the criminal court. This provision will remain in effect until the final closure of the DJJ. (Welf. & Inst. Code, § 731.)

Existing law provides that, a person whose case originated in juvenile court but who was sentenced in criminal court shall not serve their sentence in a juvenile facility but may remain in the juvenile facility until transferred to serve their sentence in an adult facility. (Welf. & Inst. Code, § 208.5.)

This bill requires the finding that the minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court to be supported by clear and convincing evidence.

This bill requires the transfer order to state the reasons supporting the court's finding that the minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court.

COMMENTS

1. Need For This Bill

According to the author:

Current law allows the juvenile court, on motion of the prosecution, to transfer a 16- or 17- year- old youth to adult court if the juvenile court determines, following a hearing, that the youth "should be transferred" to a court of criminal jurisdiction." (Welf. & Inst. Code, §707(a)(3).) In making its decision, the court considers five enumerated criteria: (1) the degree of criminal sophistication; (2) whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction; (3) the minor's previous delinquent history; (4) the success of previous rehabilitation attempts by the juvenile court, and the circumstances; and (5) the gravity of the offense alleged in the petition to have been committed by the minor. (*Ibid.*) The prosecution has the burden of proving the youth should be transferred to adult court by a preponderance of the evidence. (Cal. Rules of Ct., rule 5.770(b)(2).) Court rules suggest that this is a "totality of the circumstances analysis." (See Cal. Rules of Ct., rule 5.770, Advisory Comm. Comment.)

The California Supreme Court has called the transfer of a minor from juvenile court for prosecution in adult court “the worst punishment the juvenile system is empowered to inflict.” (*Ramona R. v. Superior Court* (1985) 37 Cal.3d 802, 810.) Despite the enormous consequence of the transfer decision, current statutory provisions provide insufficient guidance as to how the juvenile court should make its determination.

Over 50 years ago, the California Supreme Court held that “the dispositive question [at a transfer hearing] is the minor’s amenability to treatment through the facilities available to the juvenile court.” (*Jimmy H. v. Superior Court* (1970) 3 Cal.3d 709, 714; see also *People v. Chi Ko Wong* (1976) 18 Cal.3d 698, 717 (holding that the issue at a transfer hearing “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”); *J.N. v. Superior Court* (2018) 23 Cal.App.5th 706, 714 (“There must be substantial evidence adduced at the hearing that the minor is not a fit and proper subject for treatment as a juvenile before the court may certify him to the superior court for prosecution.”) However, current statutory provisions do not explicitly reflect this principle, nor do they direct how the juvenile court should exercise its discretion.

...

By providing a clear legal standard, AB 2361 will reduce arbitrary determinations, ensure that youth amenable to treatment and rehabilitation will be retained in juvenile court, and will allow appellate courts more effectively to review the lower court’s holdings to determine whether the transfer was based on clear and convincing evidence

2. Juvenile Court Jurisdiction

As a general rule, any minor between the age of 12 and 17, inclusive, who commits a crime falls within the jurisdiction of the juvenile court. (Welf. & Inst. Code, § 602.) This extends to a youth alleged to have committed a crime before their 18th birthday, even if they were an adult at the time or arrest or commencement of proceedings. (Welf. & Inst. Code, § 603.) For example, if someone commits a crime at age 17, but it is not discovered or tried until the person is 20, the person can still be tried in juvenile court. The jurisdiction of the juvenile court continues until the youth is 23 years old, unless the youth would have, in criminal court, faced a sentence of 7 years or more, in which case the juvenile court’s jurisdiction continues until the youth turns 25. (Welf. & Inst. Code, § 607.)

Some minors may be tried as adults, depending on the age of the minor at the time of the offense and the crime charged. Minors who may be subject to transfer to adult criminal court include those alleged to have committed any felony when 16 years old or older, or 14- and 15-year-old minors who are alleged to have committed one of a list of enumerated serious or violent felonies. (Welf. & Inst. Code, § 707, subd. (a).)

3. Transfers from Juvenile Court to Adult Criminal Court

The Arnold-Kennick Juvenile Court Act, enacted in 1961, established 16 as the minimum age for which a minor could be transferred from juvenile court to adult criminal court. Over 30 years later, AB 560 (Peace), Chapter 453, Statutes of 1994, lowered the age at which a minor could be transferred to adult criminal court from 16 to 14 years of age. In response to the perception that juvenile crime was on the rise and more dangerous than the delinquency of earlier decades, Proposition 21 was passed by the voters in March of 2000. Among other things, Proposition 21 increased sentences for specified gang-related crimes, authorized a prosecutor to file charges against a juvenile offender directly in criminal court for specified felonies, prohibited the sealing of juvenile records involving Welfare and Institutions Code section 707(b) offenses, and designated additional crimes as violent and serious felonies. (Ballot Pamp., Prim. Elec. (Mar. 7, 2000), text of Prop. 21, p. 45 et seq.)

Over the last several years, there have been a series of U.S. Supreme Court cases involving juvenile defendants that have recognized the inherent difference between juveniles and adults for purposes of sentencing, relying in part on research on brain and adolescent development. (*See Roper v. Simmons* (2005) 543 U.S. 551 [125 S.Ct. 1138, 161 L.Ed. 2d]; *Graham v. Florida* (2010) 560 U.S. 48 [130 S.Ct. 2011, 176 L.Ed. 825]; *J.D.B. v. North Carolina* (2011) 564 U.S. 261 [131 S. Ct. 2394, 180 L.Ed. 310]; *Miller v. Alabama* (2012) 567 U.S. 460 [132 S.Ct. 2455, 183 L.Ed. 2d 407].) The Court summarized those differences in *Miller*:

Roper and *Graham* establish that children are constitutionally different from adults for purposes of sentencing. Because juveniles have diminished culpability and greater prospects for reform, we explained, “they are less deserving of the most severe punishments.” *Graham*, 560 U.S., at 68, 130 S.Ct. 2011, 176 L.Ed. 2d 825. Those cases relied on three significant gaps between juveniles and adults. First, children have a “‘lack of maturity and an underdeveloped sense of responsibility,’ ” leading to recklessness, impulsivity, and heedless risk-taking. *Roper*, 543 U.S., at 569, 125 S.Ct. 1183, 161 L.Ed. 2d 1. Second, children “are more vulnerable . . . to negative influences and outside pressures,” including from their family and peers; they have limited “contro[l] over their own environment” and lack the ability to extricate themselves from horrific, crime-producing settings. *Ibid*. And third, a child’s character is not as “well formed” as an adult’s; his traits are “less fixed” and his actions less likely to be “evidence of irretrievabl[e] deprav[ity].” (567 U.S. 460, 570 [125 S.Ct. 1183, 161 L. Ed. 2d 1].)

This body of case law and the research relied upon in these cases prompted the passage of several juvenile justice reform measures in the state in the past decade. In addition, the voters passed Proposition 57 in 2016, which among other things, eliminated the ability of a prosecutor to file charges against a juvenile offender directly in criminal court. (See, *Voter Information Guide for 2016* <<https://vig.cdn.sos.ca.gov/2016/general/en/pdf/complete-vig.pdf>>.)

4. Transfer Criteria to Adult Criminal Court

Current law allows the juvenile court, on motion of the prosecution, to transfer minors aged 14 to 17 years old, who are alleged to have committed specified offenses, to adult court if the juvenile court determines, following a hearing, that the youth should be transferred to a court of criminal jurisdiction. (Welf. & Inst. Code, §707, subd. (a)(1)-(3).) The prosecution bears the burden of

proving the youth should be transferred to adult court by a preponderance of the evidence. (Cal. Rules of Ct., rule 5.770, subd. (b)(2).) Upon the prosecutor filing a motion to transfer the minor from juvenile court to adult criminal court, the juvenile court orders the probation officer to submit a report on the behavioral patterns and social history of the minor. (Welf. & Inst. Code, §707, subd. (a).) The prosecutor and the minor may submit additional relevant information to aid the court in evaluating a juvenile's fitness to remain in juvenile court. (*Ibid.*)

A minor is not required to establish innocence in order to show amenability to the juvenile court system, and the fact that a minor did commit the charged offense does not automatically require a finding of unfitness. (*People v. Superior Court (Jones)* (1998) 18 Cal.4th 667, 682.) Rather, the dispositive question at a transfer hearing is the minor's amenability to treatment through the facilities available to the juvenile court. (*Jimmy H. v. Superior Court* (1970) 3 Cal.3d 709, 714; see also *People v. Chi Ko Wong* (1976) 18 Cal.3d 698, 717 [holding that the issue at a transfer hearing "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"]; *J.N. v. Superior Court* (2018) 23 Cal.App.5th 706, 714 ["There must be substantial evidence adduced at the hearing that the minor is not a fit and proper subject for treatment as a juvenile before the court may certify him to the superior court for prosecution."].)

In making its decision, the court considers five enumerated criteria: (1) the degree of criminal sophistication; (2) whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction; (3) the minor's previous delinquent history; (4) the success of previous rehabilitation attempts by the juvenile court; and (5) the gravity of the offense alleged in the petition to have been committed by the minor. (Welf. & Inst. Code, § 707, subd.(a)(3)(A)-(E).) Under the current statutory scheme, appellate courts have held that juvenile courts "may accord the appropriate weight to each factor." (*C.S. v. Superior Court* (2018) 29 Cal.App.5th 1009, 1034.)

5. Impact of Transfer Orders

Youth transferred to adult criminal court may have worse post-release outcomes than youth who receive treatment in the juvenile system. As has been observed by the California Supreme Court, 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." (*People v. Ramona* (1985) 37 Cal.3d 802, 810.) The Centers for Disease Control has also concluded: "[T]ransfer policies have generally resulted in increased arrest for subsequent crimes, including violent crime, among youth who were transferred compared with those retained in the juvenile justice system. To the extent that transfer policies are implemented to reduce violent or other criminal behavior, available evidence indicates that they do more harm than good." (Robert Hahn et al., *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services* (Nov. 30, 2007) <<https://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm>>.)

Data also indicate that there are racial disparities with respect to transfer orders. The California Department of Justice (DOJ) publishes an annual report on juvenile justice in the state, including the number of arrests, referrals to probation departments, petitions filed, and transfers from juvenile to adult criminal court. The most recent report includes data from 2020 which show that of the 45 adult-level court dispositions received, 4.4% were white, 71.1% were Hispanic, 20% were black and 4.4% were from other race/ethnic group. (California Department of Justice, *Juvenile Justice in California 2020* (July 2021), p. 47 <

openjustice.doj.ca.gov/sites/default/files/2021-06/Juvenile%20Justice%20In%20CA%202020.pdf>.)

6. Effect of This Bill

This bill requires the court to make a finding by clear and convincing evidence that the minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court in order to find that the minor should be transferred to adult criminal court. Under existing law, the prosecution bears the burden of proof to demonstrate by a preponderance of the evidence that the youth should be transferred to adult court. (Cal. Rules of Ct., rule 5.770, subd. (b)(2).) Accordingly, the prosecution is only required to prove that it is more likely than not that the youth should be transferred, in order for a youth to be taken out of the jurisdiction of the juvenile court and sent to adult criminal court. This bill adopts the higher legal standard of “clear and convincing” which means that the evidence is substantially more likely than not to be true.

This bill also requires the court to state the reasons supporting the court’s finding that the minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court in its transfer order. In so doing, this bill encourages more meaningful appellate review of the transfer order.

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