
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 624 **Hearing Date:** July 6, 2021
Author: Bauer-Kahan
Version: April 21, 2021
Urgency: No **Fiscal:** Yes
Consultant: SJ

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

HISTORY

Source: Pacific Juvenile Defender Center

Prior Legislation: SB 823 (Comm. on Budget and Fiscal Rev.), Ch. 337, Stats. 2020
AB 1423 (Wicks), Ch. 583, Stats. 2019
SB 1391 (Lara), Ch. 1012, Stats. 2018
SB 439 (Mitchell), Ch. 1006, Stats. 2018
Proposition 57, as approved by the voters on November 8, 2016
SB 382 (Lara), Chap. 234, Stats. 2015
SB 1151 (Kuehl), vetoed in 2004
Proposition 21, as approved by the voters on March 7, 2000
AB 560 (Peace), Ch. 453, Stats. 1994

Support: ACLU California Action; Anti-Recidivism Coalition; Bend the Arc: Jewish Action; California Alliance for Youth and Community Justice; California Attorneys for Criminal Justice; California Public Defenders Association; Club Stride Inc.; Commonweal Juvenile Justice Program; Communities United for Restorative Youth Justice; East Bay Community Law Center; Ella Baker Center for Human Rights; Fresno Barrios Unidos; Human Rights Watch; Initiate Justice; Legal Services for Children; Legal Services for Prisoners With Children; Los Angeles County Bar Association, Appellate Courts Section; National Association of Social Workers, California Chapter; National Center for Youth Law; Prosecutors Alliance of California; San Francisco Public Defender; Santa Cruz Barrios Unidos; Silicon Valley De-Bug; Smart Justice California; Youth Law Center

Opposition: None known

Assembly Floor Vote: 77 - 0

PURPOSE

The purpose of this bill is to authorize immediate appellate review of an order transferring a minor from the juvenile court to a court of criminal jurisdiction if a notice of appeal is filed within 30 days of the transfer order.

Existing law provides that a minor between 12 and 17 years of age, inclusive, who violates any federal, state, or local law or ordinance, and a minor under 12 years of age who is alleged to have committed murder or a specified sex offenses, is within jurisdiction of the juvenile court, which may adjudge the minor to be a ward of the court. (Welf. & Inst. Code, § 602.)

Existing law authorizes the district attorney to make a motion to transfer a minor from juvenile court to a court of criminal jurisdiction in a case in which a minor is alleged to have committed a felony when the minor was 16 years of age or older, or in a case in which a specified serious offense is alleged to have been committed by a minor when the minor was 14 or 15 years of age, but the minor was not apprehended prior to the end of juvenile court jurisdiction. (Welf. & Inst. Code, § 707.)

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

Existing law requires the court to consider the following criteria when deciding to transfer the case:

- The degree of criminal sophistication exhibited by the minor;
- Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction;
- The minor's previous delinquent history;
- Success of previous attempts by the juvenile court to rehabilitate the minor; and,
- The circumstances and gravity of the offense alleged in the petition to have been committed by the minor. (Welf. & Inst. Code § 707, subd. (a)(3).)

Existing law authorizes a minor to appeal from a proceeding to declare the minor a ward under the jurisdiction of the juvenile court in the same manner as any final judgment, and to appeal any subsequent order as from an order after judgment. (Welf. & Inst. Code, § 800.)

Existing law provides that an order granting or denying a motion to transfer jurisdiction of a minor to the criminal court is not an appealable order. Provides that appellate review of the order is by petition for extraordinary writ. (Cal. Rules of Court, rule 5.770(g); *People v. Grisso* (1980) 104 Cal.App.3d 380, 388, disapproved on other grounds in *People v. Marsh* (1984) 36 Cal.3d 134, 141; *People v. Chi Ko Wong* (1976) 18 Cal. 3d 698, 709.)

This bill authorizes immediate appellate review of an order transferring a minor from the juvenile court to a court of criminal jurisdiction if a notice of appeal is filed within 30 days of the transfer order. Specifies that the order transferring the minor from the juvenile court to a court of criminal jurisdiction may not be heard on appeal from the judgment of conviction.

This bill provides that upon request of the minor, the superior court must issue a stay of the criminal court proceedings until a final determination of the appeal. Provides that the superior court retains jurisdiction to modify or lift the stay upon request of the minor.

This bill provides that the appeal shall have precedence in the court to which the appeal is taken and shall be determined as soon as practicable after the notice of appeal is filed.

This bill requires the Judicial Council to adopt rules of court to ensure all of the following:

- The juvenile court advises the minor of the right to appeal, of the necessary steps and time for taking an appeal, and of the right to the appointment of counsel if the minor is unable to retain counsel;
- Following the timely filing of a notice of appeal, the record is promptly prepared and transmitted from the superior court to the appellate court; and,
- Adequate time requirements exist for counsel and court personnel to implement the objectives of this section.

This bill states it is the intent of the Legislature that the provisions of this bill provide for an expedited review on the merits by the appellate court of an order transferring the minor from the juvenile court to a court of criminal jurisdiction.

COMMENTS

1. Need for This Bill

According to the author:

The impact of this bill is far greater than just a procedural change in court proceedings, this is a policy that can change the trajectory of the lives of our youth. Disproportionally, Black and Brown kids are tried as adults and are faced with major sentences life in prison that would not be an option if they were tried in juvenile court. For example, in 2019, 42 of 76 Latino youth, or more than 55%, were sent to adult court but only 8 of 18, or under 45%, of White youth were sent to adult court. This bill will provide a right of appeal of a major life altering decision made by our judges, and update our code in line with other states who recognize the importance of this decision.

2. Juvenile Court Transfer of a Minor to Adult Court

Starting with Proposition 21 in March 2000, and continuing until the passage of Proposition 57 in 2016, the prosecution was authorized in specified circumstances to file a criminal action against a minor directly in adult court. Proposition 57 eliminated direct filing in adult court, amending Welfare and Institutions Code section 707 to require a transfer hearing before a minor can be prosecuted in adult court.

The issue in a juvenile transfer hearing “is not whether the minor committed a specified act, but rather whether [they are] amendable to the care, treatment and training program available through the juvenile court facilities...” (*People v. Chi Ko Wong* (1976) 18 Cal.3d 698, 717, disapproved on another point in *People v. Green* (1980) 27 Cal.3d 1, 33.) Under current law, the prosecution may move to transfer to adult court any minor 16 years of age or older alleged to have committed a felony criminal offense. (Welf. & Inst. Code, § 707, subd. (a)(1).) The prosecution may also move to transfer to adult court a person who was 14 or 15 years of age at the time the person was alleged to have committed a specified serious or violent felony, but who was not apprehended prior to the end of juvenile court jurisdiction. (Welf. & Inst. Code, §§ 707, subd. (a)(2) & 707, subd. (b).) In making its transfer decision, the court must consider the following: the minor’s degree of criminal sophistication, whether the minor can be rehabilitated

in the time before the juvenile court would lose jurisdiction over the minor, the minor's prior history of delinquency, the success of prior attempts by the juvenile court to rehabilitate the minor, and the circumstances and gravity of the charged offense. (Welf. & Inst. Code, § 707, subd. (a)(3)(A)-(E).)

3. Disparate Impact of Transfer Orders on Youth of Color

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 2019, and indicates that although the number of youth transferred to adult court each year is small, those transferred are mostly youth of color. Specifically, 44.4% of White youth were found unfit for juvenile court compared to 55.3% of Hispanic youth and 46.2% of Black youth. (California DOJ, *Juvenile Justice in California* (2019), at p. 39 available at <<https://data-openjustice.doj.ca.gov/sites/default/files/2020-06/Juvenile%20Justice%20In%20CA%202019.pdf>>.)

4. Review of a Juvenile Court Transfer Order

The state Supreme Court has held that a juvenile court's order transferring a minor to adult court "may normally be challenged only by extraordinary writ in collateral proceedings commenced prior to the commencement of the trial on those charges for which the defendant is certified as unfit for treatment within juvenile court facilities." (*People v. Chi Ko Wong*, supra, 18 Cal.3d 698, 714.) In its analysis, the court noted that "it is settled that the right of appeal is statutory and that a judgment or order is not appealable unless expressly made so by statute." (*Id.* at p. 709.) The court observed that the statute authorizing juvenile appeals, Welfare and Institutions Code section 800, does not contain a right to appeal a transfer order, and that nothing in the legislative history of the statute governing appeal from criminal convictions in adult court indicated that the scope of appellate review from a criminal conviction extends to matters beyond the criminal proceedings (i.e., nothing indicated it extends to a transfer order made in prior juvenile court proceedings). (*Id.* at pp. 709-711.) The court further explained that under the relevant statute and Rules of Court, a juvenile transfer order is not properly included in the record on appeal and will not be considered by an appellate court. (*Id.* at p. 711.) Moreover, as a practical matter, appeal of a transfer order would afford a defendant the opportunity to secure a reversal of a judgment of conviction even where they were found guilty in an errorless trial. (*Id.* at p. 712.)

In recognizing the extraordinary writ as the proper avenue for review of a transfer order, the court noted that timely review via "immediate application for extraordinary writ in a proper case may spare a minor the burden of an unnecessary trial and thus promote justice and judicial economy" and "also assures that, if warranted, reconsideration by the juvenile court will be made on timely information without the need for updated reports and affidavits." (*Id.* at p. 713.)

Unlike appeals, writs are discretionary. Appellate courts will entertain them and render a decision on the merits in only extraordinary circumstances. (*Babb v. Superior Court* (1971) 3 Cal. 3d 841, 851.) Courts will generally only grant writ relief when there is no plain, speedy, or adequate remedy in the ordinary course of the law. (Code of Civ. Proc. §§ 1068, subd. (a), 1086, 1103, subd. (a).)

California differs from other states, including Georgia, Oklahoma, and Utah, which have enacted legislation providing for minors to appeal transfer decisions on an expedited time frame. (See

Ga. Code Ann., § 15-11-564; Okla. Stat. Ann., tit. 10A, § 2-5-205(F); Utah Code Ann., § 78A-6-704.) In 2020, the Supreme Court of Missouri concluded minors have a statutory right to appeal transfer decisions. (*D.E.G. v. Juvenile Officer of Jackson City* (Mo. 2020) 601 S.W.3d 212, 214, 217.)

Proponents of this bill argue that state law should be amended to authorize immediate appellate review of the transfer order if a notice of appeal is filed within 30 days of the order given the significant consequences of a transfer order and the disparate impact these orders have on youth of color.

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