
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 1391 **Hearing Date:** April 3, 2018
Author: Lara
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Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Juveniles: Fitness for Juvenile Court*

HISTORY

Source: Anti-Recidivism Coalition
Human Rights Watch
National Center for Youth Law
Pacific Juvenile Defender Center
Silicon Valley De-Bug
W. Haywood Burns Institute

Prior Legislation: Proposition 57, as approved by the voters on November 8, 2016
SB 382 (Lara), Ch. 234, Stats. of 2015
Proposition 21, as approved by the voters on March 7, 2000
AB 560 (Peace), Ch. 453, Stats. of 1994
SB 332, Ch. 1616, Stats. of 1961

Support: ACLU of California; American Academy of Pediatrics; Asian Law Alliance; Berkeley Organizing Congregations for Action; Berkeley Underground Scholars; Beyond the Stats at UC Davis; Building Opportunities for Self-Sufficiency; California Catholic Conference; California Public Defenders Association; California State Conference of the NAACP; Californians United for a Responsible Budget; The Campaign for the Fair Sentencing of Youth; Campaign for Youth Justice; Center for Juvenile Law and Policy; Center on Juvenile and Criminal Justice; Children's Advocacy Institute; Children's Defense Fund-California; The Children's Initiative; Children's Law Center of California; Coalition for Justice and Accountability; Coleman Advocates for Children & Youth; Community Agency for Resources Advocacy and Services; Community Development Technologies Center; Connecticut Juvenile Justice Alliance; Courage Campaign; #cut50; Ella Baker Center for Human Rights; Felony Murder Elimination Act; Friends Committee on Legislation of California; Healing Dialogue and Action; Hermanos Macehual; Human Rights Watch; Justice Policy Institute; Juvenile Justice Initiative; Juvenile Law Center; Legal Services for Children; Legal Services for Prisoners with Children; Louisiana Center for Children's Rights; Minor Differences; Motivating Individual Leadership for Public Advancement; National Center for Lesbian Rights; National Juvenile Justice Network; The New Jersey Parent's Caucus; Pacific Juvenile Defender Center; Prison Law Office; Progressive Christians Uniting; Project Rebound; Reentry Solutions Group; Root and Rebound; Sacramento Area Youth Speaks; San Francisco Public Defenders Office; The Sentencing Project; Services,

Immigrant Rights and Education Network; Texas Criminal Justice Coalition; USC Gould School of Law Post-Conviction Justice Project; USF School of Law Criminal & Juvenile Justice Clinic; Young Women's Freedom Center; Youth Alive!; Youth Justice Coalition; Youth Law Center; several individuals

Opposition: Association for Los Angeles Deputy Sheriffs; California District Attorneys Association; California State Sheriffs' Association; Los Angeles Police Protective League

PURPOSE

The purpose of this bill is to repeal the authority of a prosecutor to make a motion to transfer a minor from juvenile court to adult criminal court if the minor was alleged to have committed certain serious offenses when he or she was 14 or 15 years old.

Existing law generally provides that any person under 18 years of age who commits a crime is within the jurisdiction of the juvenile court, which may adjudge that person to be a ward of the court, except as specified. (Welf. and Inst. Code § 602.)

Existing law, the Public Safety and Rehabilitation Act of 2016, as enacted by Proposition 57, permits the district attorney to make a motion to transfer the 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 he or she 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 he or she was 14 or 15 years of age. (Welf. & Inst. Code § 707, subd. (a)(1).)

Existing law provides that upon the district attorney's motion to transfer the minor from juvenile court to a court of criminal jurisdiction, the juvenile court is required to order the probation officer to submit a report on the behavioral patterns and social history of the minor. (*Id.*)

Existing law provides that 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 is required to decide whether the minor should be transferred to a court of criminal jurisdiction. In making its decision, the court is required to consider the following:

- 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.
- The circumstances and gravity of the offense alleged in the petition 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)(2), criteria (A)-(E).)

Existing law provides that if the court orders a transfer of jurisdiction, it is required to recite the basis for its decision in an order entered upon the minutes. (Welf. & Inst. Code § 707, subd. (a)(2).)

This bill repeals the authority of a 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 specified serious offense when he or she was 14 or 15 years of age.

COMMENTS

1. Need for This Bill

Prior to 1994, California did not try 14 and 15-year-olds as adults. Instead, youth under age 16 who committed a crime were always dealt with in the juvenile justice system. In response to what turned out to be unfounded predictions about youth crime in the 1990s, California lowered the age at which youth could be tried as adults. Now, youth as young as 14 years old can be tried as adults.

When 14- and 15-year-olds were first tried as adults, society believed that the human brain was fully developed at age 12 or 13, and that young people engaged in criminal activity would always be criminals. Now, cognitive science has demonstrated youth continue to develop into their mid-twenties and do not achieve full brain development in the area needed for decision-making and self-control until age 25.

Many young people involved with the criminal justice system have also experienced trauma that can result in slowed development, and likewise creates an additional barrier that inhibits their decision-making. Additionally, experts estimate that as many as 70 percent of youth who enter the justice system have a mental health disorder or learning disability. These factors compound one another and make young teens especially vulnerable to negative influences. Those factors also mean that with treatment and services, youth can grow, mature, and become successful, productive adults in our society. The juvenile system is far better

equipped than the adult system to help people who committed crimes at age 14 or 15 years old.

The juvenile system is very different from the adult system. The juvenile system provides age-appropriate treatment, services, counseling, and education, and a youth's participation in these programs is mandatory. The adult system has no age-appropriate services, participation in rehabilitation programs is voluntary, and in many prisons, programs are oversubscribed with long waiting lists. In addition, over the past few years, the Division of Juvenile Justice has implemented dramatic changes to its care of youth, now relying on evidenced-based programs designed to reduce recidivism, including the Integrated Behavior Treatment Model, which provides collaborative services and programs that develop youths' skills for success.

The decision to try a young person as an adult is irrevocably life-altering and effects youth differently according to race and place of residence. Since the decision rests on a judge appointed by a locality, there are vast disparities in who gets sent to adult court instead of juvenile court for the same crimes.

Some localities send many youth to the adult system while others rely more heavily on the resources and tools available in the juvenile system. There are also disparities amongst the youth sent to adult court based on race. Youth of color make up nearly 92 percent of youth sent to the adult system. Latino and African American youth are more likely to be sentenced to a state-level institution (prison or Department of Juvenile Justice) than are white youth, who are more likely to receive probation or other lighter sanctions. Once within the adult system, youth fare much worse than their peers in the juvenile system.

Extensive research has established that youth tried as adults are more likely to commit new crimes in the future than their peers treated in the juvenile system. Most youth will eventually be released from prison and in the interest of protecting public safety, we need to ensure they get the treatment and tools they need to succeed when they return to society.

2. Background

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. According to the author statement included in the Senate Judiciary Committee's analysis of AB 560:

The public is legitimately concerned that crimes of violence committed by juveniles are increasing in number and in terms of the level of violence....There is a finite number of juveniles who are under 16 who do not belong in the juvenile court system and need to be dealt with in the adult court....AB 560 takes a 707(a) approach to certain 707(b) crimes. This approach is one that juvenile court judges in San Diego County support as they feel that there are a finite number of 14 to 16 year olds who do not belong in the juvenile court and are infecting other juveniles....AB 560 is a rational response to the legitimate public desire to address what is a serious problem....AB 560 attempts to protect the public and

those youngsters who we can save.... (Sen. Com. on Judiciary, Analysis of Assem. Bill 560 (1993-1994 Reg. Sess.) as amended April 21, 1994, p. 4.)

During a news conference when then-Governor Pete Wilson signed AB 560, he stated, “When young violent offenders kill, rape or rob, they must be given the same penalty as adults, because it doesn’t matter to their victims how old they are.” (<http://articles.latimes.com/1994-09-10/news/mn-36915_1_violent-crimes> [as of Mar. 23, 2018].)

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 on March 7, 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 recent juvenile justice reform measures, including SB 9 (Yee), Ch. 828, Stats. of 2012, SB 260 (Hancock), Ch. 312, Stats. of 2013, SB 261 (Hancock), Ch. 471, Stats. of 2015, AB 1308 (Stone), Ch. 675, Stats. of 2017, SB 394 (Lara), Ch. 684, Stats. of 2017, and SB 395 (Lara), Ch. 681, Stats. of 2017. In addition, the voters passed Proposition 57 on November 8, 2016, which among other things, eliminated the ability of a prosecutor to file charges against a juvenile offender directly in criminal court.

3. Transfer Process

Prior to the passage of Proposition 21 in 2000, a minor could be transferred from juvenile court to adult criminal court only after a judicial hearing. Proposition 21 amended Welfare and Institutions Code section 707 to give prosecutors the discretion to file cases against minors 14 and older, depending upon their age, alleged offense and offense history, in juvenile or adult criminal court. Proposition 21 also amended Welfare and Institutions Code section 602 to require the prosecution of minors 14 years of age or older in adult criminal court who were alleged to have committed special circumstances first-degree murder and specified sex offenses.

Proposition 57 repealed both of the above provisions, eliminating a prosecutor's ability to file charges against a minor directly in adult criminal court. Currently, a minor can only be transferred to adult criminal court from juvenile court after a fitness hearing. 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. 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.

In making a decision about whether to transfer a minor to adult criminal court, the court is required to consider the following criteria:

- 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.
- The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

Welfare and Institutions Code section 707(a) provides additional information for the court to consider when evaluating the transfer criteria. Finally, the prosecutor bears the burden of showing that a minor is unfit for juvenile court by a preponderance of the evidence. (Calif. Rules of Court, rule 5.770.)

4. Data on Transfers

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 2015, prior to the passage of Proposition 57, during a time when charges against minors could be filed directly in adult criminal court. The data indicates that charges were filed directly in adult criminal court against a relatively small number of 14 and 15 year olds, and that a large percentage 14 and 15 year olds for whom charges were not filed directly in adult criminal court were found to be fit to remain in the juvenile justice system. In 2015, charges against 492 minors were directly filed in adult criminal court.

(<https://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/misc/jj15/jj15.pdf>) [as of Mar. 26, 2018].) Three percent (15 individuals) were 14 years of age, and 10.6 percent (52 individuals) were 15 years of age. (*Id.* at 27) In cases in which charges were not filed directly in adult criminal court, juveniles aged 14 and 15 were found to be fit to remain in the juvenile

justice system at a higher percentage than all other age groups. (*Id.* at 41) The data also indicates that there are racial disparities in the filing of charges directly in adult court. Of the 492 direct files to adult court, 10.4 percent (51 individuals) were white, 60.8 percent (299 individuals) were Hispanic, 25.2 percent (124 individuals) were black, and 3.7 percent (18 individuals) were categorized as “other” racial or ethnic groups. (*Id.*)

Although 2017 data on transfers of minors from juvenile to adult criminal court is not yet available, a recently published study sheds additional light on transfer practices prior to Proposition 57. The report indicates that although youth arrests for serious felonies declined 66 percent between 2006 and 2015, the number of youths prosecuted in adult criminal court decreased overall by 38 percent and fell 48 percent in direct file cases. (<http://www.cjcj.org/uploads/cjcj/documents/youth_prosecuted_as_adults_in_california.pdf> [as of Mar. 26, 2018].) The report notes a 31 percent decline in direct files from 2015 to 2016, in part due to the passage of Proposition 57. A key finding of the report was the variation in the use of judicial transfer and direct file based on the county of arrest:

From 2010 to 2016, nine California counties had no reported cases of direct file or transfer to adult criminal court, while five counties reported rates of adult prosecution (direct file cases plus transfer hearings resulting in adult court) that were more than three times the state average....Across a seven-year period, from 2010 to 2016, many large counties relied heavily or exclusively on direct file, systematically denying youth access to a judicial transfer hearing. During this time, six California counties relied on direct file alone as a method for securing adult criminal prosecution, while an additional 30 counties direct filed at least half of the cases for which DAs sought criminal court prosecution.

The report also found that even when transfer hearings were held, minors were often transferred to adult criminal court. (*Id.*) The report acknowledged that SB 382 (Lara), Chapter 234, Statutes of 2015, may impact the percentage of youth who are transferred to adult criminal court. (*Id.* [SB 382 was intended to provide additional guidance to juvenile courts in evaluating the transfer criteria. The language of SB 382 was preserved in Proposition 57’s rewrite of Welfare and Institutions Code section 707].) Finally, the report concluded that while it is well documented that youth of color are significantly more likely than white youth to have their cases filed in adult criminal court, youth of color were also more likely than white youth to be transferred to adult criminal court. (*Id.*)

Although the data shared above is based on pre-Proposition 57 practices, the data remains relevant because it suggests that there are counties that are more likely to file a motion to transfer a juvenile and that concerns about racial disparities remain even under a judicial transfer system.

5. Effect of This Bill

This bill seeks to repeal the authority of a prosecutor to make a motion to transfer a minor from juvenile court to adult criminal court if the minor was alleged to have committed certain serious offenses when he or she was 14 or 15 years old. Because this group of offenders would no longer be eligible for transfer to adult criminal court, they would remain under the jurisdiction of the juvenile court and would complete their sentences at DJJ. In 2012, the age of jurisdiction for youths sent to DJJ was lowered from 25 to 23. This change applied to individuals committed to

DJJ on or after July 1, 2012. As such, for a newly filed petition against a minor, DJJ is only authorized to house the person until he or she turns 23, unless an order for further detention has been made by the committing court pursuant to Welfare and Institutions Code section 1800. Notably, the Governor's 2018-2019 budget proposes to increase the age of jurisdiction for youths sent to DJJ from 23 to 25. (<<http://www.ebudget.ca.gov/2018-19/pdf/BudgetSummary/PublicSafety.pdf>> [as of Mar. 26, 2018].)

6. Argument in Support

The Pacific Juvenile Defender Center, a co-sponsor of the bill, writes:

The transfer of 14 and 15 year-olds to adult court represents a small blip in juvenile court history coinciding with now defunct and discredited “get tough” mentality of the 1980s and 1990s. When the Arnold Kennick Juvenile Court Act was adopted in 1961, the Legislature placed the minimum age for transfer at age 16, and that remained solidly in place for decades.

Then, toward the end of the century, a “get tough” era in California’s policies toward juvenile coincided with crime rate spikes and public perception about juvenile crime....

...The culmination of the “get tough” era arrived in 2000, when the voters enacted Proposition 21, the Gang Violence and Juvenile Crime Prevention Act, making dozens of changes to juvenile and criminal laws, and expanding provisions for transfer of children 14 years or older. There was never an evidence-based reason supporting the transfer of 14 and 15-year olds; it was simply a function of the generalized desire to “get tough” with juveniles.

By the time the voters enacted Proposition 21, juvenile crime had already been dropping for several years, and this trend continued....

In the years since the laws permitting transfer of 14 and 15-year olds were enacted, our knowledge about adolescent and brain development has advanced exponentially...These adolescent development principles were crystallized in *Miller v. Alabama*. The Court noted that only a small proportion of adolescents who engage in illegal activity develop entrenched patterns of problem behavior even if they committed very serious crimes....

The Legislature has responded with a series of enactments that recognize these differences between adults and juveniles, and has consciously crafted solutions that are more developmentally appropriate. ...

What the Legislature has recognized with respect to all juveniles is especially true for younger children. In allowing 14 and 15 years old children to be tried in adult court, we are condemning children who are not even out of middle school to potentially serve decades of punishment in state prison....

...In our experience, most younger children involved in juvenile court cases have suffered serious abuse and trauma. They have overwhelmingly been brought up in circumstances in which the adults in their lives as well as the agencies whose duty

it is to serve them failed. Most are youth of color, and from poor or struggling families. Despite the many obstacles they face, so many of these youth are resilient and ready to change their lives. There is little to facilitate that in adult prison....

We know now that the human brain is not fully mature until age 25, and that many researchers consider the age span between 10 and 24 years as adolescence....Thus, in targeting the transfer of 14 and 15 year-olds, we are really just addressing the youth who are the most immature, and the most in need of services that address their developmental stage....

In sum, the reasons for lowering the age of transfer to 14 were the product of fears and perception that were not true then, and which have long since been repudiated. More importantly, our concern for public safety calls for interventions that are age appropriate and likely to produce success. Those interventions are best provided in the juvenile court system.

7. Argument in Opposition

The Association for Los Angeles Deputy Sheriffs writes:

Under existing law, 14 and 15-year-olds who are charged with offenses listed in Welfare & Institutions Code section 707(b) may be prosecuted in the adult system if a court finds them unfit for the juvenile system. This is not a decision that a prosecutor can make unilaterally....[A] judge must make that decision only after carefully evaluating many factors related to the age and development of the juvenile offender.

The offenses that would trigger a fitness hearing are among the most serious offenses in our Penal Code. Murder, attempted murder, voluntary manslaughter, forcible rape, forcible sodomy, forcible oral copulation, arson, kidnapping for ransom, kidnapping for purposes of robbery, kidnapping with bodily harm, kidnapping for purposes of sexual assault, assault with a firearm, torture, and carjacking are just some of the offenses that would even make it possible for a court to entertain the possibility of transferring a juvenile into the adult system.

Under SB 1391, a 14 or 15-year-old who commits one more of these offenses could not, under any circumstances, be prosecuted as an adult. While the juvenile system may be the appropriate way to handle some of these offenders, we do not believe that it is in every case. That determination should continue to be made on a case by case basis.

-- END --