
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair
2023 - 2024 Regular

Bill No: SB 545 **Hearing Date:** April 11, 2023
Author: Rubio
Version: February 15, 2023
Urgency: No **Fiscal:** Yes
Consultant: SJ

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

HISTORY

Source: Human Rights for Kids

Prior Legislation: None known

Support: 11:11 Media Impact; Building Opportunities for Self-Sufficiency; Bridge Network; Ceres Policy Research; City of Oakland Mayor Sheng Thao; Communities United for Restorative Youth Justice; Disability Rights California; East Bay Asian Youth Center; Family Assistance Program; Law Enforcement Action Partnership; Loyola Law School, Sunita Jain Anti-Trafficking Initiative; National Association of Social Workers, California Chapter; National Juvenile Justice Network; Polaris Project; R Street Institute; Rights4Girls; Santa Cruz Barrios Unidos; Shared Hope International; Sister-to-Sister 2; World Without Exploitation; (if amended) Pacific Juvenile Defender Center

Opposition: California Attorneys for Criminal Justice; (unless amended) California District Attorneys Association

PURPOSE

The purpose of this bill is to prohibit the juvenile court from transferring a matter to criminal court if it finds by clear and convincing evidence that the person against whom the child is accused of committing the offense, trafficked, sexually abused, or sexually battered the minor before the commission of the offense, and require the criminal court to transfer a case back to the juvenile court if the court finds by clear and convincing evidence that the person against whom the child is accused of committing the offense trafficked, sexually abused, or sexually battered the minor and evidence regarding the minor's status as a victim was not available or argued before the transfer hearing.

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

Existing law requires the court to consider the following criteria when deciding whether 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)(A)-(E).)

Existing law specifies when evaluating 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. (Welf. & Inst. Code § 707, subd. (a)(3)(A)(ii).)

Existing law specifies when evaluating 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. (Welf. & Inst. Code § 707, subd. (a)(3)(C)(ii).)

Existing law establishes an affirmative defense to a charge of a crime that the person was coerced to commit the offense as a direct result of being a human trafficking victim at the time of the offense and had a reasonable fear of harm. Specifies that this affirmative defense does not apply to a violent felony, as defined. (Pen. Code § 236.23, subd. (a).)

This bill prohibits the juvenile court from transferring a matter to a criminal court if it finds by clear and convincing evidence that the person against whom the minor is accused of committing an offense trafficked, sexually abused, or sexually battered the minor.

This bill requires a criminal court to transfer a matter back to the juvenile court if the criminal court finds by clear and convincing evidence that the person against whom the minor is accused of committing an offense trafficked, sexually abused, or sexually battered the minor, and evidence pertaining to the minor's status as a victim of trafficking, sexual abuse, or sexual battery was not available or argued before the transfer hearing.

This bill requires these provisions to be construed as prioritizing the successful treatment and rehabilitation of minor sex crime victims who commit acts of violence against their abusers. Provides that it is the intent of the Legislature that these minors be viewed as victims and provided treatment and services in the juvenile or family court system.

COMMENTS

1. Need For This Bill

According to the author:

Children who have been victims of sexual assault and sex trafficking and fight back against their abusers deserve our understanding and empathy, not harsh prison sentences. Child Protective Services estimates that 63,000 children in the United States are sexually abused each year, and the National Center for Missing and Exploited Children estimate that one in six endangered runaways are likely child sex trafficking victims. Despite the traumatic experiences they endure, child sex crime victims who attack their abusers are too often prosecuted as adults and face decades in prison.

I have heard the incredible pain from survivors who have confronted this abuse first-hand. It is our duty to promote reintegration by responding with trauma-informed resources and common-sense judicial practices. SB 545 will require the courts to keep these children within the juvenile or family court system for treatment and services that provide them with healing and the ability to live a full, successful life.

2. Juvenile Transfer Hearings

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).) Existing law requires 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 find that the minor should be transferred to adult criminal court. (Welf. & Inst. Code § 707, subd. (a)(3).)

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).) Existing law provides guidance to the juvenile court when considering each of these criteria. Of relevance to this bill, existing law specifies that when evaluating 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. (Welf. & Inst. Code § 707, subd. (a)(3)(A)(ii).) Existing law additionally specifies that when evaluating 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. (Welf. & Inst. Code § 707, subd. (a)(3)(C)(ii).)

3. Available Legal Defenses

This bill covers three categories of victims who have been accused of committing a crime: victims of trafficking, sexual abuse, and sexual battery. Proponents of this bill argue that existing legal defenses are too narrow to provide relief to these defendant-victims.

Current law establishes an affirmative defense to a charge of a crime that the person was coerced to commit the offense as a direct result of being a human trafficking victim at the time of the offense and had a reasonable fear of harm. (Pen. Code § 236.23, subd. (a).) However, this defense is not available when the defendant has been accused of committing a violent felony.

Self-defense is another available defense in which the defendant asserts that force or violence was used against someone else to protect the defendant, property, or another person. A self-defense claim generally requires that the defendant reasonably believed that he or she was in imminent danger of suffering bodily injury, reasonably believed that the immediate use of force was necessary to defend against that danger, and used no more force than was reasonably necessary to defend against that danger.

4. Effect of This Bill

Proponents of this bill argue that minor victims of trafficking, sexual abuse, or sexual battery who are accused of committing a crime against the person who trafficked, sexually abused, or sexually battered the minor should not be transferred to adult criminal court. Instead, the bill's supporters contend that these juveniles should remain under the jurisdiction of the juvenile court where they can receive the services they need while avoiding the harsher penalties they would face if their cases were transferred to adult criminal court. Specifically, this bill would prohibit a juvenile court from transferring a minor's case to adult criminal court if it finds by clear and convincing evidence that the person against whom the minor is accused of committing an offense trafficked, sexually abused, or sexually battered the minor. This bill additionally requires a criminal court to transfer a matter back to the juvenile court if the criminal court finds by clear and convincing evidence that the person against whom the minor is accused of committing an offense trafficked, sexually abused, or sexually battered the minor, and evidence pertaining to the minor's status as a victim of trafficking, sexual abuse, or sexual battery was not available or argued before the transfer hearing.

5. Arguments in Support

City of Oakland Mayor Sheng Thao writes:

As we fight against human trafficking and the sexual abuse of children here in Oakland, we appreciate the legislative work like SB 545 being done [to] reform our criminal justice system in order to support victims.

It is a failure of our social safety-net whenever children find themselves facing criminal charges. Those that do have likely faced extreme hardship from an early age and may have been the victims of abuse and/or live with mental illnesses. Far too often, the criminal justice system fails to account for the circumstances that led to these minors committing crimes. This bill takes aim at the treatment of underage victims of sexual abuse and trafficking who commit crimes against their abusers by preventing them from being tried and convicted as adults. Children should not have to face the stricter sentences that come with being tried as adults when their crimes come as a direct result of the cruel abuse they've faced.

Those who commit crimes of any kind must be held accountable for their actions. However, condemning children to prison sentences typically reserved for adults because they committed crimes against their abusers is a clear miscarriage of justice.

The National Juvenile Justice Network supports this bill writing:

SB 545 will prohibit child victims of trafficking, sexual abuse, or sexual battery who commit crimes against their abusers from being convicted and sentenced as adults in criminal court.

Child victims of sex trafficking are often subject to physical and sexual abuse by their traffickers and those that exploit and rape them. ...And they are being subjected to this brutality at a time when the parts of their brain related to judgment and impulse control have not been fully developed ... Children cannot

control their emotions and impulses, nor can they evaluate risks, in the same manner as adults. This prevents them from understanding the consequences of their actions as it relates to individuals who have committed severe abuse against them.

...

Children who lash out against their abusers should be provided with treatment and services in a trauma-informed system designed to help youth. ...

6. Arguments in Opposition

According to the Pacific Juvenile Defender Center:

PJDC believes that no youth should ever be tried in adult court, and we are aligned with the intent of eliminating transfer for victims of trafficking and sexual abuse. However, we believe that it would be a giant step backwards to require such a victimized youth to have to prove these facts by clear and convincing evidence. We also believe that the mitigating impact of being a victim should apply in every case in which a young person is facing transfer to adult court, and not just in those cases where the offense is committed against the trafficker/abuser. We have proposed that SB 545 explicitly require the juvenile court, in making a determination whether or not to transfer a youth, consider the fact that the youth is a victim of trafficking, sexual abuse or sexual battery. We believe this will accomplish two goals: (1) highlight for the youth's counsel the need to inquire and investigate this issue; and (2) broaden the inquiry so that the issue is not limited to crimes against the trafficker/abuser, but instead takes into account in every case the youth's status as a victim.

As for proposed subsection (b), the remand, or reverse waiver from criminal court back to juvenile court, PJDC understands that youth far too often do not disclose the abuse and victimization they have suffered, for a variety of reasons. ... [I]t is imperative that *at any time* evidence that the youth committed the crime against someone who trafficked, sexually abused or sexually battered them comes to light, there be some recourse to revisit all of the relevant evidence in making this critical decision. However, we believe and have proposed that this remedy of return to juvenile court should be placed within the provisions of section 707.5, which already allows a return of certain cases to juvenile court for disposition.

The California District Attorneys Association writes:

...The mandatory nature of the bill defeats the purpose of transfer hearings and removes the court's discretion.

The purpose of transfer hearings is for a judge to determine whether a minor is amenable to rehabilitation under juvenile jurisdiction. A judge may consider any relevant factor, ***including but not limited to*** the minor's mental and emotional health at the time of the alleged offense, and the effect of familial, adult, or peer pressure on the minor's actions. [WIC 707(A)(ii)]. Thus, current law already

allows judges to consider the relationship of the victim to the juvenile offender, including any history of trafficking, sexual abuse or sexual battery.

A minor may present evidence that they were coerced to commit the offense as a direct result of being a human trafficking victim at the time of the offense and had a reasonable fear of harm. Penal Code section 236.23 also allows a minor to present evidence that they committed a crime as a direct result of being human trafficked. ...

During a transfer hearing, a minor may also present evidence of childhood trauma, including evidence that they were a victim of physical or sexual abuse. [WIC 707(C)(ii)]. ...

CDAAs would remove its opposition if the bill was amended to change the language from “shall” to “may,” and to add the following language to WIC 707(A)(ii) “...the effect of familial, adult, or peer pressure on the minor’s actions, *including clear and convincing evidence that the victim trafficked, sexually abused, or sexually battered the minor...*”

-- END --