

The Changing Landscape of Juvenile Transfer in the Wake of Proposition 57

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OVERVIEW OF SESSION

- Historical Developments in W & I § 707
- Current Standard for Transfer Hearings
- Emerging Issues
- What is Happening on the Ground?
- What is Needed?

HISTORICAL DEVELOPMENTS IN 707

- 1976
 - Transfer divided into two categories -707(a) and 707(c); 707(b) offense list added
- 1976 – 2000
 - Transfer to adult court only after judicial hearing:
 - 707(a) – no presumption
 - 707(c) – presumed not fit

THE “GET TOUGH” ERA

- 1976 -2000
 - More offenses added to 707(b) list; changes in age and offense eligibility for 707 categories
- 1999
 - A third way is added – 602(b) – Automatic Transfer
 - 707(a) – remains unchanged

PROPOSITION 21

- 2000
 - Direct file added
 - “A murderer is more likely to be 17 years old than any other age at the time the offense was committed”
 - “The rehabilitation/treatment juvenile court philosophy was adopted at a time when most juvenile crime consisted of petty offenses”
 - Ages and 707(b) offenses expanded for judicial transfer
- 2000 – 2016
 - 707(a) unchanged; 707(b) offense list grows, but no major changes

Supreme Court Jurisprudence on Adolescents in the Justice System

From 2005 through 2016, the United States Supreme Court issued 5 opinions addressing the need to treat juveniles differently from adults in sentencing and in justice system processing

The Supreme Court in the 21st Century

- *Roper v. Simmons* (2005) 543 U.S. 551 - no capital punishment for juveniles
- *Graham v. Florida* (2010) 560 U.S. 48 - no LWOP for juveniles in non-homicide cases
- *J.D.B. v. North Carolina* (2011) 564 U.S. 261 – age is relevant in deciding whether to give *Miranda* warnings – “reasonable child” standard
- *Miller v. Alabama* (2012) 567 U.S. 460 – no mandatory LWOP for juveniles
- *Montgomery v. Louisiana* (2015) – *Miller* is retroactive

The “*Miller* Factors” Encapsulate Supreme Court Holdings

- Immaturity, impetuosity, and failure to appreciate risks and consequences
- Family and home environment that surrounds the youth—and from which he cannot usually extricate himself
- Circumstances of the homicide offense, including the extent of participation in the conduct, and the way familial and peer pressures may have affected the youth
- Incompetencies associated with youth—for example, inability to deal with police officers, prosecutors (including on a plea agreement), or incapacity to assist one’s own attorneys
- Capacity for rehabilitation

Supreme Court Based Its Opinions on Adolescent Development Science

- Research into adolescent and brain development beginning in the 1990's supported Supreme Court findings
- Landmark treatise by National Academies of Science, *Juvenile Justice Reform: An Adolescent Development Approach (2013)*

S.B. 382 (2015)

- Kept the five 707 transfer criteria, but clarified factors to be considered in relation to each criterion
 - Closely tracked *Miller* language
 - Focused attention much more on the young person, not the offense
 - This language was later retained verbatim in Proposition 57 (W & I Code, § 707(a), as amended by Prop. 57)

Legislative History on SB 382

- Senate Bill 382 - "More information is better"
 - The criteria that is currently used is outdated and not based on current law or cognitive science
 - "There is a tremendous need for clarification of the fitness criteria"
 - **SPECIFICALLY ADDRESSES THE FIFTH CRITERION**
 - It is critical that judges have the most relevant information and the full picture of an individual. The court must go beyond the circumstances surrounding the offense itself.
 - Senate comments still include W & I Code § 206
 - 707(a) is amended, but standard remains the same

First Criterion

First Criterion: 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.

Second Criterion

Second Criterion: 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.

Third Criterion

Third Criterion: 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.

Fourth Criterion

- Fourth Criterion: 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.

Fifth Criterion

- Fifth Criterion: 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.

Proposition 57

- General Election November 8, 2016 – Prop 57 – “Public Safety and Rehabilitation Act”
 - The intent:
 - Protect and enhance public safety
 - Save money by reducing wasteful spending on Prisons
 - Prevent federal courts from indiscriminately releasing prisoners
 - Stop the revolving door of crime by emphasizing rehabilitation, **especially for juveniles.**
 - Require a judge **not a prosecutor** to decide whether juveniles should be tried in adult court.

RAMIFICATIONS

- The “New” Section 707:
 - Any felony + 16 years old
 - W & I Code § 707(b) + 14/15
- Eliminated presumption of unfitness; prosecutor bears burden of preponderance of evidence
- Language requiring findings on each of the five criteria is gone
- Criteria as amended by SB 382 remain
- No more direct file or automatic transfer

THE NEW STANDARD

- Section 707(a)(2), provides simply that the court “shall decide only whether the minor should be transferred to a court of criminal jurisdiction”
- In making its decision, the court “shall consider the criteria specified in subparagraphs (A)-(E)” and if transfer ordered shall “recite the basis for its decision in an order entered upon the minutes”

THE NEW COURT RULES

The amended California Rules of Court (eff. May 22, 2017) implement Proposition 57:

- California Rules of Court 5.766
 - 16 + felony or 14/15 + W & I Code § 707(b)
 - Notice 5 days before hearing and before attachment of jeopardy
 - Youth may request prima facie showing*
 - California Rules of Court 5.768
 - Probation social study on whether youth should be transferred; due 2 court days before hearing
 - Court may request recommendation by probation
- * This is in the new court rule but scope may be litigated; is it detention only, or probable cause showing, as well?

THE NEW COURT RULES (Contd.)

California Rules of Court 5.770

- Burden of proof on petitioner by preponderance of evidence
- Court decides whether to transfer case to the criminal court based on evaluation of the 5 criteria; Advisory Committee urges use of "totality of the circumstances" standard
- Language about unamenability based on one or a combination of criteria gone
- Court to recite basis for decision in the record if transfer ordered (Advisory Committee urges findings in all cases)
- Court sets date for criminal court appearance
- Review of order is by writ filed within 20 days of arraignment in criminal court
- No plea permitted once transfer hearing noticed

THE NEW STANDARD

- Focuses on the **PERSON** not the alleged facts
- NOT:
 - A trial on the instant offense
 - A preliminary hearing
 - About the victim
- Shift in Perspective
 - From Probation – Seriousness of offense alone is not enough
 - From the DA – Filing considerations
 - From the Bench – Not just a question of "is it possible" that the person can be rehabilitated. Shift inquiry to whether the person is amenable to rehabilitation based on the five criteria
 - From the Defense – Prosecutor has burden, but need to help the court to understand amenability in relation to the criteria

EMERGING ISSUES

- Hearsay – Extent of admissibility, what is “reliable hearsay” - (*People v. Chi Ko Wong* (1976) 18 Cal. 3d 698: “It is very clear that the very nature of the fitness hearing precludes imposition of strict evidentiary standards,” and “As the issue therein is not whether the minor committed a specified act but rather whether he is amenable to the care...of the juvenile court...it is manifest that a finding of fitness or unfitness is largely a subjective determination based on hearsay and opinion evidence.”)
- Discovery Obligations – including Brady, 1054 applicability
- Right of Prosecution to obtain an expert
- Expert issues – Scope
- Considerations in presenting the case
 - Live testimony vs. Reports
 - Live Testimony vs. “Prop 115”
 - Stipulations?
 - Hearsay is allowed, but does it suit your position? (In re Luis M. (1986) 180 Cal.App.3d 1090)
 - Expert Issues
- What about old cases – are they still good authority?
 - Depends on whether they rest on repealed provisions

WHAT IS HAPPENING ON THE GROUND, AND WHAT IS NEEDED?

- Some practitioners using same old approach
- Some systems not set up well to provide transfer hearing supports (experts, social workers)
- Inadequacies in past resources offered to the youth affect analysis of criteria