

The Transfer Hearing Process 2017

Procedure for Certification to Adult Court

Transfer Hearings are a request from the People to have the minor tried as an adult. Once a court has made a finding that a minor/youth should be transferred adult court, either by a waived hearing or a contested hearing these are generally the requirements:

Process in the Courtroom

- 1. The Clerk and Minute Order.** Certified Copies of the Minute order and findings of the court should be given to Probation, the District Attorney, the Defense Attorney and the Bailiff in court. The order is part of a judicial form that lists the court's findings on the five factors it must consider for fitness pursuant to W&I §707, and should be certified. The clerk will notify Pre-Trial Services of the findings by calling 408-918-7900 and asking for the Court Unit Supervisor.
- 2. The Judge and Bail.** The juvenile justice court is required to set bail. The DA and the defense attorney should check the bail schedule prior to the hearing. The Santa Clara County Bail Schedule is available online:
http://www.scsccourt.org/court_divisions/criminal/bail.shtml.
Such issues as previous bench warrants, vulnerable victims and factors in aggravation or mitigation should be considered in setting bail.
 - **Pretrial Services:** W&I 707.1(b)(4): "A minor found not a fit and proper subject to be dealt with under the juvenile court law shall, upon the conclusion of the fitness hearing, be entitled to release on bail or on his or her own recognizance on the same circumstances, terms, and conditions as an adult alleged to have committed the same offense." As such, upon the setting of bail, the minor should be will be referred to the Office of Pretrial Services for an investigative report pursuant to Penal Code §§1318-1320 for the court to consider release or a modification of bail at Arraignment. One copy of the police report will remain at Juvenile Hall for the Pre-Trial Services Officer to review.
- 3. District Attorney and Next Court Date.** The DA should ask the court to set an Arraignment date within 72 hours (just like a new arrest) and notify victims. The DA will contact the investigating LEA and the Adult Team DA Supervisor to issue the case.
- 4. Probation Officer:** Will provide three copies of the police report(s) and a "Felony Affidavit" or Probable Cause statement to be signed by the Judge. This is the arrest and gives the District Attorney 72 hours to file a formal complaint in Superior Court.
- 5. Requests to house subjects in Juvenile Hall past 18th Birthday:** W&I §707.1(b)(2) says a subject who has reached the age of 18 "shall be delivered to the custody of the sheriff unless the court finds that it is in the best interests of the person and the public that he or she be retained in juvenile hall. If a hearing is requested by the person, the transfer shall not take place until after the court has made its findings." Defense counsel seeking to have their client remain in Juvenile Hall should be prepared to make such a motion at the conclusion of the fitness hearing. Only Subjects under 19 are eligible.
- 6. Notice of Appeal:** The court shall advise the minor as well as the district attorney, of their right to writ the court's decision pursuant to CA Rules of Court 5.772(j). The minor

shall be advised of his/her right to appointed counsel, and that the writ must be filed within 20 days of the minor's arraignment in Superior Court

REMAND Procedures for IN-CUSTODY youth/subjects:

- a) **Remand if the youth is Ordered to be Housed in Juvenile Hall:** If the youth is under 18 or 18 and over and ordered by the Judge to be housed in Juvenile Hall and currently housed in Juvenile Hall, the minor should be booked by the Sheriff's Deputy Acting as Bailiff into Juvenile Hall Police Admissions for a "courtesy hold" for the Department of Correction with the assistance of the Juvenile Hall Staff. Hearings should be held as the last item of the day so the courtroom can be closed. A certified Minute Order, Housing Order, Bail Affidavit and a Probable Cause form (signed/dated by judge) and a copy of the police reports go with the transporting deputy. The Probation Court Officer will assist in the transportation and open the doors to juvenile hall in the courtrooms as needed. A S/O Tech will transport the paper work to Administrative Booking at the Jail when called at 408-808-7401 by the courtroom Bailiff.
- b) **Remand if the subject is Ordered to be Housed in the Jail:** If the Subject is over 18 and the Judge orders the Subject to be housed in the County Jail, the Subject should be booked into custody in County Jail on this case. The Sheriff's Deputy acting as Bailiff will take the Subject into custody immediately and call the Transportation desk at the Jail at 408-957-5810 to arrange transportation. Hearings should be held as the last item of the day so the courtroom can be closed. The Transportation Unit of the Jail will transport the Subject. The Sheriff's Deputy acting as Bailiff is given the Certified Minute Order, Housing Order, Bail Affidavit, Probable Cause form (signed/dated by judge), and a copy of the police reports. The Bailiff should give all documents to the Transportation Deputy Sheriff for Intake Booking.

REMAND Procedures for OUT-OF-CUSTODY youth/subjects:

- c) **Remand if the youth is Ordered to be Housed at Juvenile Hall:** If the court sets bail and remands the minor into custody but he is under 18 or over 18 and ordered by the Judge to be housed in Juvenile Hall, the minor should be booked by the Sheriff's Deputy Acting as Bailiff into Juvenile Hall Police Admissions for a "courtesy hold" for the Department of Correction with the assistance of the Juvenile Hall Staff. Hearings should be held as the last item of the day so the courtroom can be closed. A certified Minute Order, Housing Order, Bail Affidavit and a Probable Cause form (signed/dated by judge) and a copy of the police reports go with the Bailiff. The Probation Court Officer will assist in the transportation and open the doors to juvenile hall in the courtrooms as needed. A S/O Tech will transport the paper work to Administrative Booking at the Jail when called at 408-808-7401 by the Bailiff.

d) **Remand if the subject Ordered to be Housed in the Jail:** If the subject is over 18 and out of custody, and the Judge sets bail or otherwise remands the Subject and orders the Subject to be housed in the County Jail, the Subject should be booked into custody in County Jail on this case. The Sheriff's Deputy acting as Bailiff will take the Subject into custody immediately and call the Transportation desk at the Jail at 408-957-5810 to arrange transportation. Hearings should be held as the last item of the day so the courtroom can be closed. The Transportation Unit of the Jail will transport the Subject. The Sheriff's Deputy acting as Bailiff is given the Certified Minute Order, Housing Order, Bail Affidavit, Probable Cause form (signed/dated by judge), and a copy of the police reports. The Bailiff should give all documents to the Transportation Deputy Sheriff for Intake Booking.

Note: A Courtesy Copy of the Housing Order Shall be provided to the Juvenile Hall Screening Officer by the Sheriff's Department in all cases where a Minor or Subject are to be held as a Courtesy Hold in Juvenile Hall for the Jail.

Co-Chairs:

Judge Katherine Lucero
Chris Arriola, Deputy District Attorney

Committee Members:

Lt. Kristen Tarabetz, Office of the Sheriff
Rosa Valesco, Juvenile Hall
LaRon Dennis, Deputy District Attorney
Nisreen Baroudi, Deputy Public Defender
Rodolfo Longoria, Probation
Dana Nunes, Admin Booking, Department of Correction
Maria Chilton, Admin Booking, Department of Correction
Sandra Pacheco, Admin Booking, Department of Correction
Sean Rooney, Juvenile Hall
Lt. Christopher Grumbos, Main Jail, Office of the Sheriff
Lt. Thea Lera, Courts, Office of the Sheriff
Natai Levai, Pretrial Services
Michelle Covarrubias, Office of the Sheriff

Agreed to on October 26, 2016

Juvenile Fitness Hearing Scripts

Transfer to Criminal Court

SAMPLE

1. The court has read and considered the petition and the probation officer's report as well as {any other relevant evidence, reports or witness testimony.}
2. After reviewing and considering all reports, evidence and criteria pursuant to WIC 707(a)(2)(A-E), the court has determined by a preponderance of the evidence that the minor should be transferred to the court of criminal jurisdiction.
3. Therefore, the transfer motion is granted.
4. The court finds that the minor was at least 16 years of age at the time of the offense, OR. Was at least 14 years of age and the offense is listed in WIC 707(b).
5. The court further finds that the minor is not a fit and proper subject for juvenile court.
6. The basis for the decision is that: *****
7. Court orders proceedings in the criminal matter to be re-instated upon transfer of the minor. (IF CASE WAS STAYED DUE TO PROP 57) Matter sent back for TRC or other appropriate date.

8. Or, The matter is referred to the DA for prosecution under the general law. The complaint may be filed in person or via e-filing.
9. Arraignment shall be set in Dept. ____ at ____ on (48 hours from now) at the [courthouse].
10. OSC on Juvenile Petition filed XXX re: dismissal set for XXX in J-2, OR Petition is hereby dismissed.
11. The youth is to be detained at either juvenile hall or county jail pursuant to the policies and procedures of the Riverside County Sherriff's department.
12. Minor remains remanded to the custody of the Riverside County sheriff.
13. Riverside County Sherriff's Department ordered to transport minor to court on XXXX, 2017, in Department __ for the following hearing: Arraignment.
14. Bail is set at \$1,000,000, (or other proper amount).
15. Advise of : CRC 5.770(g): minor must file writ no later than 20 days after minor enters plea to the complaint or indictment in adult court. Transfer of jurisdiction is only challenged by way of extraordinary writ.
16. Clerk to Give Notice:

OTHER POSSIBLE ORDERS/FINDINGS:

Court overrules DA's objection to the retroactivity application of Prop 57 to the present case.

REMAIN IN JUVENILE COURT

After reviewing and considering all reports, evidence and criteria pursuant to WIC 707(a)(2)(A-E), the court has determined by a preponderance of the evidence that the minor should remain in the juvenile court.

The court further finds that the minor is a fit and proper subject for juvenile court.

The motion to transfer filed by the District Attorney is denied.

A jurisdictional hearing shall be set for *****

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Case Name:	
ORDER TO TRANSFER JUVENILE TO CRIMINAL COURT JURISDICTION (Welfare and Institutions Code, § 707)	
CASE NUMBER:	

1. a. Date of hearing: _____ Dept.: _____ Room: _____

b. Judicial officer (name): _____

c. Persons present: Child Child's attorney (name):
 Deputy District Attorney (name):
 Other: _____

2. The court has read and considered: The petition and report of the probation officer.
 Other relevant evidence.

3. THE COURT FINDS (check one):

Welfare and Institutions Code section 707

- a. The child was 16 years old or older at the time of the alleged felony offense; or
 b. The child was 14 or 15 years of age at the time of the alleged offense, and the current alleged offense is an offense listed in Welfare and Institutions Code section 707(b).

4. THE COURT ALSO FINDS AND ORDERS

The court has considered all of the criteria in section 707(a)(2) and makes the following findings and orders on the motion to transfer jurisdiction to the criminal court for the reasons stated on the record:

a. The transfer motion is denied. The child is retained under the jurisdiction of the juvenile court.
 The next hearing is on (date): _____ at (time): _____
 for (specify): _____

b. The transfer motion is granted. The prosecutor has shown by a preponderance of the evidence that the child should be transferred to the jurisdiction of the criminal court.

(1) The matter is referred to the District Attorney for prosecution under the general law.

(2) The child is ordered to appear in criminal court on (date): _____ at (time): _____
 in Department: _____

(3) The petition filed on (date): _____ is dismissed without prejudice on the appearance date in 2.

(4) The child is to be detained in juvenile hall county jail (section 207.1).

(5) Bail is set in the amount of: \$ _____

(6) The child is released on own recognizance.
 to the custody of: _____

Date: _____

 JUDICIAL OFFICER

NOTICE:
Minor's Right to File a Extraordinary Writ to the Court of Appeal
After Finding the Juvenile Case shall be transferred to Adult Court
by a Juvenile Court Judge

California Rules of Court, rule 5.772(j) provides: "An order that a child is or is not a fit and proper subject to be dealt with under the juvenile court law is not an appealable order. Appellate review of the order is by extraordinary writ. Any petition for review of a judge's order determining the child to be unfit or denying an application for rehearing of the referee's determination of unfitness must be filed no later than 20 days after the child's first arraignment on an accusatory pleading based on the allegations that led to the unfitness determination."

You are also entitled to free counsel and a free transcript for this purpose. Please tell your attorney in adult court that you wish to exercise this right after you are arraigned in adult court by _____. After you are arraigned in adult court you have 20 days to file this document. (Attached)

Case Name: _____

Case Number: _____

Date: _____