

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

W23-09

Title

Juvenile Law: Transfer of Jurisdiction to Criminal Court

Action Requested

Review and submit comments by January 20, 2023

Proposed Rules, Forms, Standards, or Statutes

Amend Cal. Rules of Court, rule 5.770; revise form JV-710

Proposed Effective Date

September 1, 2023

Proposed by

Family and Juvenile Law Advisory Committee
Hon. Stephanie E. Hulse, Cochair
Hon. Amy M. Pellman, Cochair

Contact

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Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes to amend one rule and revise one form to implement recent legislative changes requiring that the court find by clear and convincing evidence that a youth is not amenable to rehabilitation while under the jurisdiction of the juvenile court. Assembly Bill 2361 (Bonta; Stats. 2022, ch. 330) amended Welfare and Institutions Code section 707 to include that standard of proof, and to require the court to set forth the basis in an order entered upon the minutes for making that finding.

The Proposal

The Family and Juvenile Law Advisory Committee proposes amending rule 5.770 of the California Rules of Court and revising *Order to Transfer Juvenile to Criminal Court Jurisdiction (Welfare and Institutions Code, § 707)* (form JV-710) to reflect the changes to section 707¹ enacted by AB 2361.

Amendments to rule 5.770

Rule 5.770(a) would be amended to update the standard of proof for the prosecution to a clear and convincing evidence standard. Rule 5.770(b) would be amended to add paragraph (3), which sets forth the new required court finding regarding whether the youth is amenable to

¹ All references to code sections hereafter are to the Welfare and Institutions Code unless otherwise indicated.

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.

rehabilitation while under the jurisdiction of the juvenile court. The requirements for the court to set forth its reasoning on the record would be relocated to rule 5.770(c), which currently requires the court to specify the basis for its order. The Advisory Committee Comment to rule 5.770 would also be amended accordingly, to add AB 2361 to the comment on the intent of subdivision (b), and to relocate the comment on setting forth the basis of the order to be a comment on subdivision (c).

Revisions to Order to Transfer Juvenile to Criminal Court Jurisdiction (Welfare and Institutions Code, § 707) (form JV-710)

The current optional order form to effectuate a transfer of jurisdiction from juvenile to criminal court would be revised at item 4.b. to state that the prosecution has shown by clear and convincing evidence that the youth is not amenable to rehabilitation while under the jurisdiction of the juvenile court (based on findings that are stated on the record) and should be transferred to the jurisdiction of the criminal court.

Alternatives Considered

The committee considered not changing the rule or form, but that would have left the documents both legally inaccurate and misleading.

Fiscal and Operational Impacts

There will be minor costs to translate and reproduce the new forms. The heightened standard of proof may result in the filing of fewer motions to transfer youth to criminal court jurisdiction by the prosecuting attorney.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would four months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rule 5.770, at pages 4–5
2. Form JV-710, at page 6
3. Link A: Assembly Bill 2361,
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2361

Rule 5.770 of the California Rules of Court would be amended, effective September 1, 2023, to read:

1 **Rule 5.770. Conduct of transfer of jurisdiction hearing under section 707**

2
3 **(a) Burden of proof (§ 707)**

4
5 In a transfer of jurisdiction hearing under section 707, the burden of proving that
6 there should be a transfer of jurisdiction to criminal court jurisdiction is on the
7 petitioner, by a ~~preponderance of the evidence~~ clear and convincing evidence.

8
9 **(b) Criteria to consider (§ 707)**

10
11 Following receipt of the probation officer's report and any other relevant evidence,
12 the court may order that the youth be transferred to the jurisdiction of the criminal
13 court if the court finds by clear and convincing evidence each of the following:

- 14
15 (1) The youth was 16 years or older at the time of any alleged felony offense, or
16 the youth was 14 or 15 years of age at the time of an alleged felony offense
17 listed in section 707(b) and was not apprehended prior to the end of juvenile
18 court jurisdiction;
- 19
20 (2) The youth should be transferred to the jurisdiction of the criminal court based
21 on an evaluation of all the criteria in section 707(a)(3)(A)–(E) as provided in
22 that section; ~~and The court must state on the record the basis for its decision,~~
23 ~~including how it weighed the evidence and identifying the specific factors on~~
24 ~~which the court relied to reach its decision.~~
- 25
26 (3) The youth is not amenable to rehabilitation while under the jurisdiction of the
27 juvenile court.

28
29 **(c) Basis for order of transfer**

30
31 If the court orders a transfer of jurisdiction to the criminal court, the court must
32 recite the basis for its decision in an order entered on the minutes. The court must
33 state on the record the basis for its decision, including how it weighed the evidence
34 and identifying the specific factors on which the court relied to reach its decision.
35 This statement must include the reasons supporting the court's finding that the
36 minor is not amenable to rehabilitation while under the jurisdiction of the juvenile
37 court.

38
39 **(d)–(h) * * ***

40
41 **Advisory Committee Comment**

1
2 **Subdivision (b).** This subdivision reflects changes to section 707 as a result of the passage of
3 Senate Bill 382 (Lara; Stats. 2015, ch. 234), ~~and~~ Proposition 57, the Public Safety and
4 Rehabilitation Act of 2016, and Assembly Bill 2361 (Bonta; Stats. 2022, ch. 330). SB 382 was
5 intended to clarify the factors for the juvenile court to consider when determining whether a case
6 should be transferred to criminal court by emphasizing the unique developmental characteristics
7 of children and their prior interactions with the juvenile justice system. Proposition 57 provided
8 that its intent was to promote rehabilitation for juveniles and prevent them from reoffending, and
9 to ensure that a judge makes the determination that a youth should be tried in a criminal court.
10 Consistent with this intent, the committee urges juvenile courts—when evaluating the statutory
11 criteria to determine if transfer is appropriate—to look at the totality of the circumstances, taking
12 into account the specific statutory language guiding the court in its consideration of the criteria.

13
14 ~~Under subdivision (b)(2), the court must state on the record the basis for its decision. The~~
15 ~~statement of decision must fully explain the court’s reasoning to allow for meaningful appellate~~
16 ~~review. See, e.g., *C.S. v. Superior Court* (2018) 29 Cal.App.5th 1009.~~

17
18 **Subdivision (c).** The court must state on the record the basis for its decision. The statement of
19 decision must fully explain the court’s reasoning to allow for meaningful appellate review. See,
20 e.g., *C.S. v. Superior Court* (2018) 29 Cal.App.5th 1009.

21
22 While this rule and section 707 only require the juvenile court to recite the basis for its decision
23 when the transfer motion is granted, the advisory committee believes that juvenile courts should,
24 as a best practice, state the basis for their decisions on these motions in all cases so that the parties
25 have an adequate record from which to seek subsequent review.
26

ATTORNEY OR PARTY WITHOUT ATTORNEY: NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NUMBER: STATE: ZIP CODE: FAX NO.:	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council JV-710.v3.101722.cz
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:
 Youth Youth'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 youth was 16 years old or older at the time of the alleged felony offense; or
 b. The individual was 14 or 15 years of age at the time of the alleged offense, the alleged offense is an offense listed in Welfare and Institutions Code section 707(b), and the individual was not apprehended before the end of juvenile court jurisdiction.

4. **AFTER CONSIDERING EACH OF THE TRANSFER OF JURISDICTION CRITERIA, THE COURT ALSO FINDS AND ORDERS:**

The court has considered each of the criteria in Welfare and Institutions Code section 707(a)(3) and has documented its findings on each of the criteria on the record, and based on those findings makes the following orders:

- a. The transfer motion is denied. The youth 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 clear and convincing evidence that the youth is not amenable to rehabilitation while under the jurisdiction of the juvenile court and 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 youth 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 youth is to be detained in juvenile hall county jail (Welfare and Institutions Code section 207.1).
 (5) Bail is set in the amount of: \$ _____
 (6) The youth is released on own recognizance to the custody of: _____

Date: _____

 JUDICIAL OFFICER