



GOVERNING LAW

Section 707, subdivision (a)(3) sets forth five factors:

- (A)(i) The degree of criminal sophistication exhibited by the minor;
- (B)(i) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction;
- (C)(i) The minor's previous delinquent history;
- (D)(i) Success of previous attempts by the juvenile court to rehabilitate the minor; and
- (E)(i) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.



GOVERNING
LAW

AB 236 (Approved Sept. 2022) | Changed the law

(1) raising the prosecution's burden of proof;

(2) requiring a new specific finding regarding amenability to rehabilitation;

and

(3) requiring the court to state the reasons supporting a finding that the minor is not amenable to rehabilitation.



GOVERNING
LAW: NEW
SEPARATE
FINDING OF
AMENABILITY!

Rule of Court 5.770 now states:

b) Criteria to consider (707) Following receipt of the probation officer's report and any other relevant evidence, the court may order that the youth be transferred to the jurisdiction of the criminal court if the court finds by clear and convincing evidence each of the following:

(1) The youth was 16 years or older at the time of any alleged felony offense, or the youth was 14 or 15 years of age at the time of an alleged felony offenses listed in section 707(b) and was not apprehended prior to the end of juvenile court jurisdiction;

and

(2) The youth should be transferred to the jurisdiction of the criminal court based on an evaluation of all the criteria in section 707(a)(3) as provided in that section;

and

(3) The youth is not amenable to rehabilitation while under the jurisdiction of the juvenile court.



GOVERNING
LAW: NEW
SEPARATE
FINDING OF
AMENABILITY!

- the ultimate finding . . . concerns a global assessment of the minor's suitability to rehabilitation within the juvenile court system, and not just a comparison of the time needed with the time remaining.


(In re Miguel R. (2024) 100 Cal.App.5th 152,166-167.)

EVIDENTIARY ISSUES

- the juvenile court is required to “order the probation officer to submit a report on the behavioral patterns and social history of the minor.” (§ 707, subd. (a)(1).)
- In addition to the transfer report, the court may consider “any other relevant evidence that the [prosecutor] or the minor may wish to submit.” (§ 707, subd. (a)(3).)
- a youth has the statutory and constitutional right to demand the presentation of a prima facie case that he committed the alleged offense and to insist that this be done on the basis of credible nonhearsay evidence. (*Edsel P. v. Superior Court* (1985) 165 Cal.App. 3d 763)

EVIDENTIARY ISSUES:
PROBATION OPINION
LACKS FOUNDATION

- “There was no evidence as to the efforts necessary to rehabilitate J.N. and no evidence as to why available programs were unlikely to result in rehabilitation in the time allotted. This lack of evidence rendered any opinion based on the report without evidentiary value. Therefore, the prosecution failed to establish by a preponderance of evidence J.N. was unsuitable for treatment in the juvenile court.”
- (*J.N. v. Superior Court* (2018) 23 Cal.App. 5th 706.)



GOVERNING
LAW: DOES
CLIENT HAVE
REHABILITATIVE
NEEDS?

- The first step, identify the client's rehabilitative needs.
- Only then does a court turn to whether those needs could be met by the juvenile court.
 - “The prosecution here presented no evidence to demonstrate what minor's rehabilitative needs were, much less why they could not be met within the juvenile court's jurisdiction.” (S.S., (2023) 89 Cal.App.5th 1277, 1291.)
 - “The prosecution here similarly presented little if any evidence to demonstrate what Kevin's rehabilitative needs were . . .” (*Kevin P. v. Superior Court*, 2020) 57 Cal.App.5th 173.)
 - “There was no evidence as to the efforts necessary to rehabilitate J.N.” (*J.N.*, (2018) 23 Cal.App.5th 706, 722.)

ADULTS IN JUVENILE COURT, WHAT NOW?

RETROACTIVE TRANSFER
HEARINGS



Retrospective transfer hearings are “complex. But complexity is inherent when juveniles are treated as adults . . . The potential complexity in providing juveniles charged directly in adult court with a transfer hearing is no reason to deny the hearing.”

(People v. Superior Court (Lara), 4 Cal. 5th 299, 313.)

The juvenile court determines whether it “would have transferred” the former minor.

Ameliorative changes to the criminal law to extend as broadly as possible, distinguishing only as necessary between sentences that are final and sentences that are not.

People v. Padilla (2022) 13Cal.5th 152, 158; *In re Estrada* (1965) 63 Cal.2d 740



GOVERNING
LAW: TWO
YEAR
PERIOD OF
CONTROL

- Senate Bill No. 135, following up on Assembly Bill No. 134, amended Welfare and Institutions Code section 607
 - The court may retain jurisdiction over a person who is 25 years of age or older for a period not to exceed two years from the date of disposition if the person is found to be a person described in Section 602 by reason of the commission of an offense listed in subdivision (b) of Section 707.
 - The court shall exercise jurisdiction in conformance with the objectives of the juvenile court.


GOVERNING LAW:
CONDUCT
SUBSEQUENT TO
AN OFFENSE MUST
BE CONSIDERED
AT A TRANSFER
HEARING

- “when evaluating previous delinquent history, the third factor in transfer hearings, conduct occurring after the alleged offense is properly considered by the court.” (*D.C v. Superior Court* (2021) 71 Cal.App.5th 441.)
- In “evaluating the amount of time that rehabilitation in the juvenile system will ultimately require” for 707, subd. (a)(3)(B)(i), the court should consider predisposition progress made toward rehabilitation.” (*Kevin P. v. Superior Court*, supra, 57 Cal.App.5th at page 200, footnote 13.)



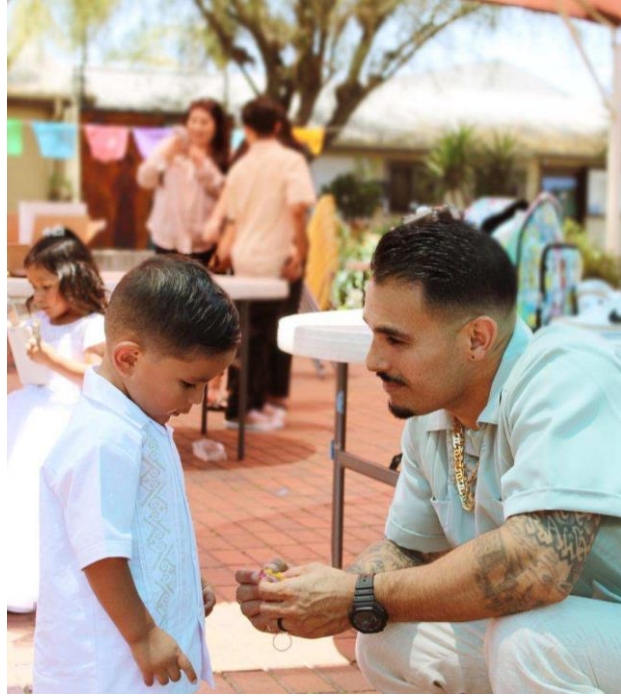
GOVERNING
LAW:
RETROACTIVITY

- Hearing is conducted applying current law!
- *In re A.M.* (2024) 102 Cal.App. 5th 557
 - remand order used "to determine whether it would have transferred ..."
 - Trial court conducted transfer hearing on former 15 year,



GOVERNING
LAW: ADULTS
CANNOT BE
HOUSED
WITH MINORS

- Can't go to SYTF, needs immediate step down!
- Returning former minors, over the age of 25, cannot be housed in juvenile facilities, but the juvenile court may order the former minor detained in an appropriate adult facility, including temporary placement in county jail, or other appropriate prison reentry program.
- (WIC 202; 607; 875.)







Technical Assistance

Maintaining Youth in Juvenile Court: Published Research

The following are summaries of some of the more recent, or more significant, research done on the outcomes and consequences of transferring youth to adult court. As can be seen, youth who are transferred to adult court are likely to have more behavioral issues in custody, be victimized at a higher rate, suffer lifelong negative consequences (health, relationships, employment), and recidivate more, which ultimately has a deleterious effect on public safety.

Kurlychek, M.C., Kijowski, M.C., and Gagnon, A.M. (2022). The long-term consequences of imprisoning our youth: The lasting impact of time spent in adult jails and prisons. *Social Problems*.

This study from January 2022 includes 13,905 youth ages 16 and 17 who were arrested in New York State in 1987. The study followed them for 24 years from the date of the arrest that led to them being processed in adult court and incarcerated in adult jail/prison. The key finding from the study was that youth who spent time in adult jail or prison were more likely to recidivate, especially more quickly, and were also more likely to have longer criminal careers, as well as commit more crimes. Youth who were not incarcerated in these institutions did not encounter these effects. This suggests that “adult incarceration of juveniles does not protect society in the short term. Further, our results suggest that it is not only short-term recidivism that is negatively affected by adult institutionalization, but that the deleterious consequences last for years into one’s adult life.” (pg. 13)

Mulvey, E. P., & Schubert, C. A. (2012). *Transfer of juveniles to adult court: Effects of a broad policy in one court*. Washington, DC: US Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

This 2012 Office of Juvenile Justice and Delinquency Prevention (OJJDP) report is frequently cited in the discourse surrounding juvenile transfer to adult court. The report presents findings from the Pathways to Desistance study that examined the effects of transfer to adult court on serious adolescent offenders in Maricopa County, AZ. Overall, the study found that most youth transferred to adult court recidivated more often and more quickly than their peers who stayed in the juvenile court system. "Prior work indicates that transferred youth are more likely to commit criminal acts than adolescents kept in the juvenile justice system." (pg. 1) Additionally, the authors also highlight that being placed in the adult system can disrupt juveniles' development and growth: "Adolescents in the adult system may be at risk for disruptions in their personal development, identity formation, relationships, learning, growth in skills and competencies, and positive movement into adult status." (pg. 1)

Myers, D. L. (2003). *The recidivism of violent youths in juvenile and adult court: A consideration of selection bias*. *Youth Violence and Juvenile Justice*, 1(1), 79-101.

This study is 20 years old, but like the study above, it continues to be cited frequently. The author studied 494 Pennsylvania youth who committed violent offenses who were either waived to adult court or kept in juvenile court. The study found that youth who were transferred to adult court faced increased recidivism rates and as a result, a decrease in public safety. "Many supporters of treating juvenile offenders as adults assert that transfer sends notice to violent youths that their behavior will no longer be tolerated, particularly when harsh sanctions are imposed in adult court. Consequently, it is expected that the transfer process will reduce future motivations toward offending, thereby further increasing public safety. The results of the current study fail to support this contention. Furthermore, these findings correspond well with those of other recent studies (Bishop et al., 1996; Fagan, 1995; Podkopacz & Feld, 1996; Winner et al., 1997; see also Myers 2001; Myers & Kiehl, 2001) that compared the recidivism of transferred juveniles with that of similar youths retained in juvenile court." (pg. 94)

Taylor, Melanie. "Juvenile transfers to adult court: An examination of the long-term outcomes of transferred and non-transferred juveniles." *Juvenile and Family Court Journal* 66.4 (2015): 29-47.

This 2015 study used the 1997 National Longitudinal Survey of Youth to examine education and employment outcomes from 1998 to 2011 among 692 juveniles who were charged in adult and juvenile courts from 1997 to 2002. The takeaway of the study is that prosecution in adult court leads to long-term, negative life-course outcomes for juveniles, especially regarding annual income in adulthood and obtaining employment. "In other words, juveniles are having serious long-term impacts on their lives (i.e., lowered incomes) following conviction for relatively low-level crimes. This means that juvenile transfer, while a more punitive response to juvenile offenders, is a counterproductive solution to reducing delinquency and future adult offending." (pg. 42)

Daigle, & Hoffman, C. Y. (2018). Violent Victimization and Future Expectations: Results from a Longitudinal Study of At-Risk Youth. *Victims & Offenders*, 13(6), 798–813.

This article from 2018 shifts the focus from a youth's current criminal involvement to whether a youth was victimized and how that can change their sense of self within their surroundings. The relationship between offending and expectations for the future is well documented. This study conducted seven interviews with youths who were serious adolescent offenders placed in both juvenile and adult facilities. The interviews asked about the experience of being victimized and predictive factors for adult success. The study identified victimization by asking youth whether they have been subject to different kinds of violence (e.g., "Have you been shot at?") at any point before the initial interview and between each interview that occurred every six months. (pg. 803) Results showed that being victimized can reduce positive expectations for the future which directly affects a youth's ability to believe they can achieve what they set out to do. Other research has found that youth in adult facilities may experience more misconduct and victimization which would continue to affect their ability to set goals or commit to motivational processes that encourage them to improve themselves and their life circumstances.

Haerle. (2019). Unpacking Adultification: Institutional Experiences and Misconduct of Adult Court and Juvenile Court Youth Living Under the Same Roof. *International Journal of Offender Therapy and Comparative Criminology*, 63(5), 663–693.

This study from 2019 looks at the effects of an offender's status within California's Division of Juvenile Justice (DJJ) facility when comparing youth who originated from an adult court commitment versus youth who were committed as wards of the juvenile court. The results of the study showed that different factors can predict general misconduct and violent misconduct for wards from the adult court and juvenile court youth, which implies that "the motives that drive behavior during juvenile incarceration differed considerably for 'adult' juveniles and 'juvenile' juveniles." (pg. 685) A longer sentence length significantly predicted an increase in any misconduct for adult court juveniles but did not have the same effect for juvenile court youth. Also, fear or uncertainty about an impending transfer to an adult facility can impact youths' sense of self and how they behave in a juvenile facility while waiting to be transferred. The study did show, however, that higher levels of institutional supports can lower the rate of any or violent misconduct for adult court youth, but there needs to be a belief in rehabilitation, which is affected by many other factors including access to services and being treated similar to juvenile court youth.

Kolivoski, & Shook, J. J. (2016). Incarcerating Juveniles in Adult Prisons: Examining the Relationship Between Age and Prison Behavior in Transferred Juveniles. *Criminal Justice and Behavior*, 43(9), 1242–1259.

This 2016 study considered the relationship between age and prison behavior (e.g. institutional misconduct) among juveniles committed to adult prisons. Looking at youth within the Michigan Department of Corrections, there were multiple findings such as juveniles who were younger when they were committed to prison accumulated more misconducts. Adolescence is a time for personal development and learning about social boundaries. This finding may indicate that as youth learn to adapt, they are learning from the prison environment and not the community they are expected to reintegrate with. While analyzing the data set provided, researchers found that misconduct was significantly higher for certain groups of youth within the adult facility such as African Americans, those with documented mental health issues, and those with more extensive prior juvenile histories. This research identifies that youth do not "serve time" as well as adults, based on their age and developmental status, which should be considered when transferring them to adult facilities. (pgs. 1255, 1257)