



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 22-176

For business meeting on: September 20, 2022

Title

Appellate Procedure and Juvenile Law:
Transfer of Jurisdiction to Criminal Court
and Appeal from Transfer Orders

Rules, Forms, Standards, or Statutes Affected

Adopt Cal. Rules of Court, rule 8.417;
amend rules 5.766, 5.768, 5.770, 8.50, 8.60,
8.63, 8.404, 8.406, 8.409, and 8.412; and
revise forms JV-710 and JV-800

Recommended by

Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Family and Juvenile Law Advisory
Committee

Hon. Stephanie E. Hulse, Cochair
Hon. Amy M. Pellman, Cochair

Agenda Item Type

Action Required

Effective Date

January 1, 2023

Date of Report

September 2, 2022

Contact

Christy Simons, 415-865-7694
christy.simons@jud.ca.gov

Tracy Kenny, 916-263-2838
tracy.kenny@jud.ca.gov

Executive Summary

In 2018, the Legislature passed Senate Bill 1391 (Lara; Stats. 2018, ch. 1012), which amended Welfare and Institutions Code section 707 to provide that a minor must be at least 16 years of age to be considered for transfer of jurisdiction to criminal court unless the individual for whom transfer is sought was 14 or 15 at the time of the offense, the offense is listed in section 707(b), and the individual was not apprehended until after the end of juvenile court jurisdiction. The Judicial Council took action to implement these age-related changes in the jurisdiction of the juvenile court in 2019 but revoked that action when a split of authority within the California Courts of Appeal arose as to whether these changes were enacted in a constitutional manner. That split was resolved by the California Supreme Court in 2021 in favor of the constitutionality

of the legislation. Additionally, legislation was enacted in 2021 to provide an expedited review on the merits from an order granting a motion to transfer. The Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee propose adopting a new rule of court, amending several other rules, and revising two forms pertaining to the transfer-of-jurisdiction process and juvenile appeals to reflect both legislative changes to the transfer statutes.

Recommendation

The Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee recommend that the Judicial Council, effective January 1, 2023:

1. Adopt California Rules of Court, rule 8.417 to govern the appeal of orders transferring jurisdiction from juvenile to criminal court;
2. Amend California Rules of Court, rules 5.766, 5.768, and 5.770 to implement statutory and recent case law changes pertaining to the transfer-of-jurisdiction process and update terminology;
3. Amend California Rules of Court, rules 5.770, 8.50, 8.60, 8.63, 8.404, 8.406, 8.409, and 8.412 to clarify and implement new statutory provisions pertaining to appeals of orders transferring jurisdiction from juvenile to criminal court;
4. Revise *Order to Transfer Juvenile to Criminal Court Jurisdiction* (form JV-710) to reflect recent changes in the transfer statute and case law, and update terminology; and
5. Revise *Notice of Appeal—Juvenile* (form JV-800) to include specific provisions concerning appeals of transfer of jurisdiction orders.

The proposed new and amended rules and revised forms are attached at pages 9–23.

Relevant Previous Council Action

The Judicial Council adopted California Rules of Court, rules 5.766, 5.768, and 5.770 effective January 1, 1991, as rules 1480, 1481, 1482, and 1483 respectively, and they were renumbered effective January 1, 2007. These rules have been amended numerous times, most recently effective May 22, 2017, to implement the changes enacted by Proposition 57.

Juvenile Fitness Hearing Order (Welfare and Institutions Code, § 707) (form JV-710) was adopted by the council effective January 1, 2006, and made optional effective January 1, 2012. It was significantly revised effective May 22, 2017, to implement the changes enacted by Prop. 57. *Notice of Appeal—Juvenile* (form JV-800) was adopted effective January 1, 1993, and revised numerous times, most recently effective September 1, 2020, to implement council-sponsored legislation clarifying procedures for accessing juvenile court records during an appeal of the matter.

The Judicial Council adopted a rules and forms proposal to implement the provisions of SB 1391 on September 24, 2019, with an effective date of January 2, 2020. The council then revoked that action on November 25, 2019, after the Court of Appeal, Second Appellate District, filed an opinion on September 30, 2019, finding that the provisions of SB 1391 were not consistent with the voters' intent in enacting Prop. 57 and thus holding that the amendments to section 707 were an unconstitutional exercise of legislative authority.¹

Analysis/Rationale

Background

On November 8, 2016, the people of the State of California enacted Proposition 57, the Public Safety and Rehabilitation Act of 2016, effective November 9, 2016. Proposition 57 amended existing law to require that the juvenile court consider a motion by the district attorney or other appropriate prosecuting officer to transfer the minor to the jurisdiction of the criminal court before a juvenile can be prosecuted in a criminal court. To that end, the proposition repealed Welfare and Institutions Code section 602(b),² which had provided that certain serious and violent felonies were to be prosecuted in criminal court, as well as section 707(d), which had authorized the district attorney to directly file an accusatory pleading involving certain minors in criminal court. In addition, the proposition eliminated a set of presumptions that applied in determining whether a case should be transferred and instead provided the court with broad discretion to determine whether the minor should be transferred to a court of criminal jurisdiction, taking into account numerous factors and criteria.

SB 1391 further amended these provisions to limit the transfer of cases involving 14- and 15-year-old juveniles to those in which the alleged offender is not apprehended until after reaching adulthood, and the offense is one listed in section 707(b). On February 25, 2021, the California Supreme Court resolved a split of opinion within the Courts of Appeal and upheld the constitutionality of SB 1391 in *O.G. v. Superior Court*, 11 Cal.5th 82, making clear that the legislation's age limitations on transfer of minor to criminal court jurisdiction were permissible amendments to Prop. 57.

In 2021, the Legislature enacted section 801 to provide a right to an immediate appeal for minors subject to an order for transfer of jurisdiction from juvenile court to criminal court provided that the notice of appeal is filed within 30 days of the transfer order.³ That legislation requires the council to adopt rules of court to ensure that such minors are advised of their appellate rights, the record is promptly prepared and transmitted after a notice of appeal is filed, and adequate time requirements allow counsel and court personnel to comply with the objectives of the section. Subdivision (e) of section 801 states: "It is the intent of the Legislature that this section

¹ *O.G. v. Superior Court* (2019) 40 Cal.App.5th 626.

² All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

³ Assem. Bill 624 (Bauer-Kahan; Stats. 2021, ch. 195).

provides for an expedited review on the merits by the appellate court of an order transferring the minor from the juvenile court to a court of criminal jurisdiction.”

Transfer rules 5.766, 5.768, and 5.770

The current rules of court governing the process for transfer of jurisdiction from juvenile to criminal court provide that transfer can occur when the subject of the petition is 14 or 15 years of age and is alleged to have committed an offense listed in Welfare and Institutions Code section 707(b), or is 16 years of age or older and is alleged to have committed a felony. To be consistent with the statutory changes made by SB 1391, these rules must be amended to state that, for those who were 14 or 15 years of age at the time of the offense, a transfer petition may be considered only when the individual who is the subject of the petition was apprehended after the end of juvenile court jurisdiction.

In addition, the changes to section 707 require that code references be updated to reflect the new structure of the statute. The proposal would also update rule 5.770 to include the requirement that the court make specific findings for each of the transfer criteria in section 707(a)(3) as provided in *C.S. v. Superior Court* (2018) 29 Cal.App.5th 1009. All three rules are also proposed to be amended to use the term “youth” instead of “child,” consistent with rule 5.502(46).⁴ Finally, the committee recommends revising rule 5.776 to correct a typographical error in the most recent version approved by the council.

Transfer order form JV-710

Order to Transfer Juvenile to Criminal Court Jurisdiction (form JV-710), for optional use, would be revised to update item 3 to include the limitation on transferring individuals who were age 14 or 15 at the time of the offense to those situations in which apprehension of the subject of the petition occurred after the end of juvenile court jurisdiction; and to update item 4 to correct the statutory reference to 707(a)(2) and make it 707(a)(3), consistent with the changes enacted by SB 1391. In addition, the form is recommended to be revised to use the term “youth” instead of “child.”

Amendments to rule 5.770 to implement new appellate rights

Section 801 provides minors subject to an order transferring jurisdiction with the right to an immediate appeal if a notice of appeal is filed within 30 days of the transfer order and requires that the juvenile court grant a stay of the criminal court proceedings upon request of the minor if an appeal is filed. In addition, it requires the court to advise such minors of their appellate rights, the steps and time for taking an appeal, and the right to appointed counsel. Based on the comments, this advisement now also includes information about the right to a stay of the proceedings pending the appeal. Finally, it requires that the court prepare the record and transmit it to the Court of Appeal in a timely manner so that the appeal can be heard expeditiously.

⁴ This provision defines the term youth for the rules of court and specifies that a youth is a person who is least 14 years of age and not yet 21 years of age. In this report the term youth is used when referencing the rules of court and court forms, while minor is used when discussing statutory provisions that use that term.

Notice of Appeal—Juvenile (form JV-800)

Notice of Appeal—Juvenile (form JV-800), for optional use, would be revised to allow it to be used for the appeal of orders transferring jurisdiction from the juvenile court to the criminal court. To accomplish this, the revised form would include a new notice alerting appellants that they must file a notice of appeal within 30 days of the order, as well as a new item 7(h) to indicate that the appeal is from a transfer order under section 707. The form would also be revised to delete a generic “other” check box, and to convert the item for “other appealable orders relating to wardship,” to “other appealable orders relating to juvenile justice.” Because the form already has an item for “other appealable orders relating to dependency,” it should, as proposed, be usable for all appealable juvenile matters without requiring a nonspecific “other” item.

Appellate rules***New rule 8.417***

To ensure that appeals from transfer orders are resolved expeditiously, the committees recommend a new rule that would govern these proceedings. New rule 8.417 is modeled on rule 8.416, the rule governing fast track dependency appeals. The new rule would:

- require that the cover of the record on appeal be labeled to identify the appeal as entitled to preference;
- specify the items to be included in the record
- require the record to be prepared within 20 days and sent immediately;
- contain requirements for:
 - augmenting and correcting the record
 - the time to file briefs
 - the showing a party must make to support a request for an extension of time, and
 - the length of the grace period following a notice of failure to file a brief; and
- provide time periods for requesting and holding oral argument and submission if argument is waived.

Amended rules 8.50, 8.60, 8.63, 8.404, 8.406, 8.409, and 8.412

Section 801 provides for an appeal from an order granting transfer if the notice of appeal is filed within 30 days. This is different from the normal time of 60 days in juvenile appeals. Rule 8.406 would be amended to add the 30-day time limit for filing a notice of appeal from a transfer order. The proposed amendments specify when the 30-day time begins to run if the matter is heard by a referee not acting as a temporary judge and if an application for rehearing of an order of a referee not acting as a temporary judge is denied.

The committees also propose adding an advisory committee comment to rule 8.404. The rule provides: “The court must not stay an order or judgment pending an appeal unless suitable provision is made for the maintenance, care, and custody of the child.” For clarification and to avoid any confusion with the rules in title 5, a new comment would read: “This rule does not apply to a court’s order under rule 5.770(e)(2) staying the criminal court proceedings during the

pendency of an appeal of an order transferring the minor from juvenile court to a court of criminal jurisdiction.”

The other rules included in this proposal, rules 8.50, 8.60, 8.63, 8.409, and 8.412, would be amended to add cross-references to new rule 8.417 to the text of the rule or to the advisory committee comments, and to make minor style and punctuation changes.

Policy implications

While juvenile transfer proceedings are relatively uncommon (data from the Department of Justice suggests that fewer than 80 motions were heard in 2020, and only 25 were granted and thus subject to the expedited appellate process⁵), they have significant consequences for the youth who are subject to them, and it is critical that the rules of court set forth clear, accurate, and comprehensive procedures to ensure that these proceedings provide due process and allow for appropriate appellate review. The changes proposed by the committees seek to provide that structure and guidance so that these proceedings can conclude in a just and timely manner.

Comments

This proposal was circulated for public comment from April 1 to May 13, 2019, as part of the regular spring comment cycle. Seven organizations submitted comments on this proposal. Five commenters agreed with the proposal. Two organizations agreed if the proposal was modified. A chart with the full text of the comments received and the committees’ responses is attached at pages 24–41.

Maintain timing provisions for review of transfer decisions by juvenile referees

The committees sought specific comment on the necessity of including provisions in the rules to account for the possibility that a juvenile referee heard a transfer motion in a subordinate judicial officer capacity, rather than as a temporary judge. Two commenters indicated that in at least one court, there are transfer cases heard by referees who do not obtain stipulations from the parties to allow them to serve as temporary judges. In those cases, there would be a right to request a rehearing by a juvenile court judge. Although it appears that it is unusual and perhaps unintended that referees would hear transfer motions sitting as referees, the committees determined that rules 5.770 and 8.406 should take this possibility into account to ensure that youth have an opportunity to seek a juvenile court rehearing before seeking appellate review in these cases. For clarity, the rule 8.406(a) provisions regarding time to appeal when the matter was heard by a referee have been renumbered as subordinate to the provisions regarding time to appeal when the matter was heard by a judge of the juvenile court.

Language to incorporate the holding of C.S. v. Superior Court into rule 5.770

When the proposal to implement SB 1391 was circulated for comment in 2019, the Family and Juvenile Law Advisory Committee sought specific comment on whether rule 5.770 should articulate the holding in *C.S. v. Superior Court* that trial court judges considering a motion to transfer must make detailed findings and fully explain their reasoning for granting or denying the

⁵ [*Juvenile Justice in California, 2020, California Department of Justice, p. 38.*](#)

motion. The comments in that cycle generally favored such amendment to the rule, and the amended rule initially approved by the council in 2019 included the following language:

The court must document on the record the basis for its decision, detailing how it weighed the evidence and identifying the specific facts that persuaded the court to reach its decision, notwithstanding that the decision must be based on the totality of the circumstances and the child need not be found amenable on each of the five criteria in order to remain in juvenile court.

In this cycle, the committee opted to truncate this language somewhat in the version that circulated for comment to read:

The court must state on the record the basis for its decision, detailing how it weighed the evidence and identifying the specific factors on which the court relied to reach its decision.

Two commenters supported including this language, but suggested that it be augmented to read:

The court must state on the record the basis for its decision, by explicitly articulating its evaluative process, detailing how it weighed the evidence and identifying the specific factors on which the court relied to reach its decision.

The committees ultimately determined that the clearest approach would be to revise the sentence to read:

The court must state on the record the basis for its decision, including how it weighed the evidence and identifying the specific factors on which the court relied to reach its decision.

The committees also recommend adding a sentence to the Advisory Committee Comment for the rule to read:

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

In addition, the committees adopted changes to the proposal suggested by commenters to change the word “delinquency” to “juvenile justice” on form JV-800 to reflect the current council preference, and to require the juvenile court to include the right to a stay of the proceedings in its advisement about appellate review in a transfer proceeding.

Alternatives considered

The Family and Juvenile Law Advisory Committee considered not including the requirements of *C.S. v. Superior Court* in rule 5.770(b) but determined that the holding was important to ensuring

that the record in a transfer matter is sufficiently detailed and indicates how the court weighed each factor.

The Appellate Advisory Committee considered a narrow approach that would have involved amending only the rule regarding the time for filing a notice of appeal, rule 8.406. The committee concluded that a broader approach, including a new rule with expedited timing at several steps of the appeal, would better reflect the legislative intent that these appeals be determined as soon as reasonably practicable after the notice of appeal is filed.

The committees did not consider the alternative of proposing no rule amendments because section 801 creates a new right of appeal and requires the Judicial Council to adopt implementational rules.

Fiscal and Operational Impacts

The restrictions on transfers to criminal court for juvenile offenders ages 14 and 15 will result in the filing of fewer transfer petitions for these youth and, thus, fewer hearings on those petitions. These impacts are the result of legislative changes. Similarly, the new appellate rights in section 801 will likely result in more appeals being filed in the Courts of Appeal, also the result of the legislative change rather than the provisions of this proposal. Courts noted during the comment period that implementation of these changes would require training for staff and judicial officers, changes to case management systems, and workload impacts on clerks who prepare the records on appeal. As noted above, these cases are relatively few in number so the statewide impact should be modest.

Attachments and Links

1. Cal. Rules of Court, rules 5.766, 5.768, 5.770, 8.50, 8.60, 8.63, 8.404, 8.406, 8.409, 8.412, and 8.417, at pages 9–20
2. Forms JV-710 and JV-800, at pages 21–23
3. Chart of comments, at pages 24–41
4. Link A: Senate Bill 1391,
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB1391
5. Link B: Assembly Bill 624,
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB624

Rule 8.417 of the California Rules of Court is adopted, and rules 5.766, 5.768, 5.770, 8.50, 8.60, 8.63, 8.404, 8.406, 8.409, and 8.412 are amended, effective January 1, 2023, to read:

Rule 5.766. General provisions

(a) Hearing on transfer of jurisdiction to criminal court (§ 707)

A ~~child~~ youth who is the subject of a petition under section 602 and who was 14 years or older at the time of the alleged felony offense may be considered for prosecution under the general law in a court of criminal jurisdiction. The district attorney or other appropriate prosecuting officer may make a motion to transfer the ~~child~~ youth from juvenile court to a court of criminal jurisdiction, in one of the following circumstances:

(1) The ~~child~~ youth was 14 or 15 years or older of age at the time of the alleged offense listed in section 707(b) and was not apprehended before the end of juvenile court jurisdiction.

(2) The ~~child~~ youth was 16 years or older at the time of the alleged felony offense.

(b) * * *

(c) Prima facie showing

On the ~~child~~ youth's motion, the court must determine whether a prima facie showing has been made that the offense alleged is an offense that makes the ~~child~~ youth subject to transfer as set forth in subdivision (a).

(d) Time of transfer hearing—rules 5.774, 5.776

The transfer of jurisdiction hearing must be held and the court must rule on the request to transfer jurisdiction before the jurisdiction hearing begins. Absent a continuance under rule 5.776 or the ~~child~~ youth's waiver of the statutory time period to commence the jurisdiction hearing, the jurisdiction hearing must begin within the time limits under rule 5.774.

Rule 5.768. Report of probation officer

(a) Contents of report (§ 707)

The probation officer must prepare and submit to the court a report on the behavioral patterns and social history of the ~~child~~ youth being considered. The report must include information relevant to the determination of whether the ~~child~~ youth should be retained under the jurisdiction of the juvenile court or transferred to the jurisdiction of the criminal court, including information regarding all of the criteria in section 707(a)(2)(3). The report must also include any written or oral statement offered by the victim pursuant to section 656.2.

1
2 **(b) Recommendation of probation officer (§§ 281, 707)**
3

4 If the court, under section 281, orders the probation officer to include a recommendation,
5 the probation officer must make a recommendation to the court as to whether the ~~child~~
6 youth should be retained under the jurisdiction of the juvenile court or transferred to the
7 jurisdiction of the criminal court.
8

9 **(c) Copies furnished**
10

11 The probation officer's report on the behavioral patterns and social history of the ~~child~~
12 youth must be furnished to the ~~child~~ youth, the parent or guardian, and all counsel at least
13 two court days before commencement of the hearing on the motion. A continuance of at
14 least 24 hours must be granted on the request of any party who has not been furnished the
15 probation officer's report in accordance with this rule.
16

17 **Rule 5.770. Conduct of transfer of jurisdiction hearing under section 707**
18

19 **(a) * * ***
20

21 **(b) Criteria to consider (§ 707)**
22

23 Following receipt of the probation officer's report and any other relevant evidence, the
24 court may order that the ~~child~~ youth be transferred to the jurisdiction of the criminal court
25 if the court finds:
26

- 27 (1) The ~~child~~ youth was 16 years or older at the time of any alleged felony offense, or
28 the ~~child~~ youth was 14 or 15 years of age at the time of an alleged felony offense
29 listed in section 707(b) and was not apprehended prior to the end of juvenile court
30 jurisdiction; and
31
32 (2) The ~~child~~ youth should be transferred to the jurisdiction of the criminal court based
33 on an evaluation of all the criteria in section 707(a)(2)(3) as provided in that section.
34 The court must state on the record the basis for its decision, including how it
35 weighed the evidence and identifying the specific factors on which the court relied to
36 reach its decision.
37

38 **(c) * * ***
39

40 **(d) Procedure following findings**
41

- 42 (1) If the court finds the ~~child~~ youth should be retained within the jurisdiction of the
43 juvenile court, the court must proceed to jurisdiction hearing under rule 5.774.

- 1
- 2 (2) If the court finds the ~~child~~ youth should be transferred to the jurisdiction of the
- 3 criminal court, the court must make orders under section 707.1 relating to bail and to
- 4 the appropriate facility for the custody of the ~~child~~ youth, or release on own
- 5 recognizance pending prosecution. The court must set a date for the ~~child~~ youth to
- 6 appear in criminal court and dismiss the petition without prejudice upon the date of
- 7 that appearance.
- 8
- 9 (3) When the court rules on the request to transfer the ~~child~~ youth to the jurisdiction of
- 10 the criminal court, the court must advise all parties present ~~that~~ regarding appellate
- 11 review of the order ~~must be by petition for extraordinary writ as provided in~~
- 12 subdivision (g) of this rule. The advisement may be given orally or in writing when
- 13 the court makes the ruling. The advisement must include the time for filing the notice
- 14 of appeal or the petition for extraordinary writ as set forth in subdivision (g) of this
- 15 rule. The court must advise the youth of the right to appeal, of the necessary steps
- 16 and time for taking an appeal, of the right to the appointment of counsel if the youth
- 17 is unable to retain counsel, and the right to a stay.
- 18
- 19 (e) **Continuance ~~to seek~~ or stay pending review**
- 20
- 21 (1) If the prosecuting attorney informs the court orally or in writing that a review of the
- 22 court's decision not to transfer jurisdiction to the criminal court will be sought and
- 23 requests a continuance of the jurisdiction hearing, the court must grant a continuance
- 24 for not less than two judicial days to allow time within which to obtain a stay of
- 25 further proceedings from the reviewing judge or appellate court.
- 26
- 27 (2) If the youth informs the court orally or in writing that a notice of appeal of the
- 28 court's decision to transfer jurisdiction to the criminal court will be filed and requests
- 29 a stay, the court must issue a stay of the criminal court proceedings until a final
- 30 determination of the appeal. The court retains jurisdiction to modify or lift the stay
- 31 upon request of the youth.
- 32
- 33 (f) **Subsequent role of judicial officer**
- 34
- 35 Unless the ~~child~~ youth objects, the judicial officer who has conducted a hearing on a
- 36 motion to transfer jurisdiction may participate in any subsequent contested jurisdiction
- 37 hearing relating to the same offense.
- 38
- 39 (g) **Review of determination on a motion to transfer jurisdiction to criminal court**
- 40
- 41 (1) An order granting a motion to transfer jurisdiction of a youth to the criminal court is
- 42 an appealable order subject to immediate review. A notice of appeal must be filed
- 43 within 30 days of the order transferring jurisdiction or 30 days after the referee's

order becomes final under rule 5.540(c) or after the denial of an application for rehearing of the referee's decision to transfer jurisdiction of the youth to the criminal court. If a notice of appeal is timely filed, the court must prepare and submit the record to the Court of Appeal within 20 days.

(2) An order ~~granting or denying~~ a motion to transfer jurisdiction of a ~~child youth~~ to the criminal court is not an appealable order. Appellate review of the order is by petition for extraordinary writ. Any petition for review of a judge's order denying a motion to transfer jurisdiction of the child to the criminal court, or denying an application for rehearing of the referee's determination not to transfer jurisdiction of the child to the criminal court, 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 transfer of jurisdiction order~~ the judge's order is entered, or the referee's order becomes final under rule 5.540(c).

(h) * * *

Advisory Committee Comment

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

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

Subdivision (c). * * *

Rule 8.50. Applications

(a) * * *

(b) Contents

1 The application must state facts showing good cause—or making an exceptional showing
2 of good cause, when required by these rules—for granting the application and must
3 identify any previous application filed by any party.
4

5 (c) * * *

6
7 **Advisory Committee Comment**
8

9 **Subdivision (a).** * * *

10
11 **Subdivision (b).** An exceptional showing of good cause is required in applications in certain juvenile
12 proceedings under rules 8.416, 8.417, 8.450, 8.452, and 8.454.
13

14 **Rule 8.60. Extending time**
15

16 (a) * * *

17
18 (b) **Extending time**
19

20 Except as these rules provide otherwise, for good cause—or on an exceptional showing of
21 good cause, when required by these rules—the Chief Justice or presiding justice may
22 extend the time to do any act required or permitted under these rules.
23

24 (c) **Application for extension**
25

26 (1) * * *

27
28 (2) The application must state:
29

30 (A)–(C) * * *

31
32 (D) Good cause—or an exceptional showing of good cause, when required by
33 these rules—for granting the extension, consistent with the factors in rule
34 8.63(b).
35

36 (d)–(f) * * *

37
38 **Advisory Committee Comment**
39

40 **Subdivisions (b) and (c):** An exceptional showing of good cause is required in applications in certain
41 juvenile proceedings under rules 8.416, 8.417, 8.450, 8.452, and 8.454.
42

1 **Rule 8.63. Policies and factors governing extensions of time**

2
3 **(a) Policies**

- 4
5 (1) The time limits prescribed by these rules should generally be met to ensure
6 expeditious conduct of appellate business and public confidence in the efficient
7 administration of appellate justice.
8
9 (2) The effective assistance of counsel to which a party is entitled includes adequate
10 time for counsel to prepare briefs or other documents that fully advance the party's
11 interests. Adequate time also allows the preparation of accurate, clear, concise, and
12 complete submissions that assist the courts.
13
14 (3) For a variety of legitimate reasons, counsel may not always be able to prepare briefs
15 or other documents within the time specified in the rules of court. To balance the
16 competing policies stated in (1) and (2), applications to extend time in the reviewing
17 courts must demonstrate good cause—or an exceptional showing of good cause,
18 when required by these rules—under (b). If good cause is shown, the court must
19 extend the time.
20

21 **(b) Factors considered**

22
23 In determining good cause—or an exceptional showing of good cause, when required by
24 these rules—the court must consider the following factors when applicable:
25

26 (1)–(11) * * *

27
28 **Advisory Committee Comment**

29
30 An exceptional showing of good cause is required in applications in certain juvenile proceedings under
31 rules 8.416, 8.417, 8.450, 8.452, and 8.454.
32

33 **Rule 8.404. Stay pending appeal**

34
35 The court must not stay an order or judgment pending an appeal unless suitable provision is
36 made for the maintenance, care, and custody of the child.
37

38 **Advisory Committee Comment**

39
40 This rule does not apply to a court's order under rule 5.770(e)(2) staying the criminal court proceedings
41 during the pendency of an appeal of an order transferring the minor from juvenile court to a court of
42 criminal jurisdiction.
43

1 **Rule 8.406. Time to appeal**

2
3 **(a) Normal time**

4
5 (1) Except as provided in (2) and (3), (A), (B), and (2), a notice of appeal must be filed
6 within 60 days after the rendition of the judgment or the making of the order being
7 appealed.

8
9 ~~(2)~~ (A) In matters heard by a referee not acting as a temporary judge, a notice of appeal
10 must be filed within 60 days after the referee's order becomes final under rule
11 5.540(c).

12
13 ~~(3)~~ (B) When an application for rehearing of an order of a referee not acting as a
14 temporary judge is denied under rule 5.542, a notice of appeal from the referee's
15 order must be filed within 60 days after that order is served under rule 5.538(b)(3) or
16 30 days after entry of the order denying rehearing, whichever is later.

17
18 (2) To appeal from an order transferring a minor to a court of criminal jurisdiction:

19
20 (A) Except as provided in (B) and (C), a notice of appeal must be filed within 30
21 days of the making of the order.

22
23 (B) If the matter is heard by a referee not acting as a temporary judge, a notice of
24 appeal must be filed within 30 days after the referee's order becomes final
25 under rule 5.540(c).

26
27 (C) When an application for rehearing of an order of a referee not acting as a
28 temporary judge is denied under rule 5.542, a notice of appeal from the
29 referee's order must be filed within 30 days after entry of the order denying
30 rehearing.

31
32 **(b)–(d) * * ***

33
34 **Rule 8.409. Preparing and sending the record**

35
36 **(a) Application**

37
38 This rule applies to appeals in juvenile cases except cases governed by rules 8.416 and
39 8.417.

40
41 **(b) * * ***

1 **(c) Preparing and certifying the transcripts**

2
3 Except in cases governed by rule 8.417, within 20 days after the notice of appeal is filed:

- 4
5 (1) The clerk must prepare and certify as correct an original of the clerk's transcript and
6 one copy each for the appellant, the respondent, the child's Indian tribe if the tribe
7 has intervened, and the child if the child is represented by counsel on appeal or if a
8 recommendation has been made to the Court of Appeal for appointment of counsel
9 for the child under rule 8.403(b)(2) and that recommendation is either pending with
10 or has been approved by the Court of Appeal but counsel has not yet been appointed;
11 and
12
13 (2) The reporter must prepare, certify as correct, and deliver to the clerk an original of
14 the reporter's transcript and the same number of copies as (1) requires of the clerk's
15 transcript.
16

17 **(d)–(e) * * ***

18
19 **Advisory Committee Comment**

20
21 **Subdivision (a).** Subdivision (a) calls litigants' attention to the fact that a different rule ~~(rule 8.416)~~
22 governs the record in appeals from judgments or orders terminating parental rights and in dependency
23 appeals in certain counties (rule 8.416), and in appeals from orders granting a motion to transfer a minor
24 from juvenile court to a court of criminal jurisdiction (rule 8.417).
25

26 **Subdivision (b).** * * *

27
28 **Subdivision (c).** Subdivision (c) calls litigants' attention to the fact that a different rule (rule 8.417)
29 governs the record in appeals from orders granting a motion to transfer a minor from juvenile court to a
30 court of criminal jurisdiction.
31

32 **Subdivision (e).** * * *

33
34 **Rule 8.412. Briefs by parties and amici curiae**

35
36 **(a)** * * *

37
38 **(b) Time to file**

- 39
40 (1) Except in appeals governed by rules 8.416 and 8.417, the appellant must serve and
41 file the appellant's opening brief within 40 days after the record is filed in the
42 reviewing court.
43

- 1 (2) The respondent must serve and file the respondent's brief within 30 days after the
2 appellant's opening brief is filed.
3
4 (3) The appellant must serve and file any reply brief within 20 days after the
5 respondent's brief is filed.
6
7 (4) In dependency cases in which the child is not an appellant but has appellate counsel,
8 the child must serve and file any brief within 10 days after the respondent's brief is
9 filed.
10
11 (5) Rule 8.220 applies if a party fails to timely file an appellant's opening brief or a
12 respondent's brief, but the period specified in the notice required by that rule must be
13 30 days.
14

15 **(c) Extensions of time**
16

17 The superior court may not order any extensions of time to file briefs. Except in appeals
18 governed by rules 8.416 and 8.417, the reviewing court may order extensions of time for
19 good cause.
20

21 **(d) Failure to file a brief**
22

- 23 (1) Except in appeals governed by rules 8.416 and 8.417, if a party fails to timely file an
24 appellant's opening brief or a respondent's brief, the reviewing court clerk must
25 promptly notify the party's counsel or the party, if not represented, in writing that the
26 brief must be filed within 30 days after the notice is sent and that failure to comply
27 may result in one of the following sanctions:
28

29 (A)–(B) * * *

30
31 (2)–(3) * * *

32
33 **(e) * * ***
34

35 **Advisory Committee Comment**
36

37 **Subdivision (b).** Subdivision (b)(1) calls litigants' attention to the fact that a different rule (~~rule~~
38 ~~8.416(e)~~) governs the time to file an appellant's opening brief in appeals from judgments or orders
39 terminating parental rights and in dependency appeals in certain counties (rule 8.416(e)), and in appeals
40 from orders granting a motion to transfer a minor from juvenile court to a court of criminal jurisdiction
41 (rule 8.417(f)).
42

1 **Subdivision (c).** Subdivision (c) calls litigants' attention to the fact that a different rules (rule 8.416(f))
2 governs the showing required for extensions of time to file briefs in appeals from judgments or orders
3 terminating parental rights and in dependency appeals in certain counties (rule 8.416(f)), and in appeals
4 from orders granting a motion to transfer a minor from juvenile court to a court of criminal jurisdiction
5 (rule 8.417(g)).

6
7 **Subdivision (d).** Subdivision (d) calls litigants' attention to the fact that different rules govern the time
8 period specified in the notice of failure to timely file an appellant's opening brief or a respondent's brief
9 in appeals from judgments or orders terminating parental rights, in dependency appeals in certain counties
10 (rule 8.416(g)), and in appeals from orders granting a motion to transfer a minor from juvenile court to a
11 court of criminal jurisdiction (rule 8.417(h)).

12
13 **Rule 8.417. Appeals from orders transferring a minor from juvenile court to a court of**
14 **criminal jurisdiction**

15
16 **(a) Application**

17
18 This rule governs appeals from orders of the juvenile court granting a motion to transfer a
19 minor from juvenile court to a court of criminal jurisdiction.

20
21 **(b) Form of record**

- 22
23 (1) The clerk's and reporter's transcripts must comply with rules 8.45–8.47, relating to
24 sealed and confidential records, and, except as provided in (2), with rule 8.144.
25
26 (2) The cover of the record must prominently display the title "Appeal from Order
27 Transferring a Minor from Juvenile Court to a Court of Criminal Jurisdiction Under
28 Welfare and Institutions Code Section 801."

29
30 **(c) Record on appeal**

- 31
32 (1) In addition to the items listed in rule 8.407(a), the clerk's transcript must contain:
33
34 (A) Any report by the probation officer on the behavioral patterns and social
35 history of the minor, including any oral or written statement offered by the
36 victim under Welfare and Institutions Code section 656.2;
37
38 (B) Any other probation report or document filed with the court on the petition
39 under Welfare and Institutions Code section 602; and
40
41 (C) Any document in written or electronic form submitted to the court in
42 connection with the prima facie showing under rule 5.766(c) or the motion to
43 transfer jurisdiction.

1
2 (2) In addition to the items listed in rule 8.407(b), any reporter's transcript must contain
3 the oral proceedings at any hearings on the prima facie showing under rule 5.766(c)
4 and the motion to transfer jurisdiction.
5

6 **(d) Preparing, certifying, and sending the record**
7

8 (1) Within 20 court days after the notice of appeal is filed:
9

10 (A) The clerk must prepare and certify as correct an original of the clerk's
11 transcript and one copy each for the appellant, the respondent, and the district
12 appellate project; and
13

14 (B) The reporter must prepare, certify as correct, and deliver to the clerk an
15 original of the reporter's transcript and the same number of copies as (A)
16 requires of the clerk's transcript.
17

18 (2) When the clerk's and reporter's transcripts are certified as correct, the clerk must
19 immediately send:
20

21 (A) The original transcripts to the reviewing court by the most expeditious method,
22 noting the sending date on each original; and
23

24 (B) One copy of each transcript to the district appellate project and to the appellate
25 counsel for the following, if they have appellate counsel, by any method as fast
26 as United States Postal Service express mail:
27

28 (i) The appellant; and
29

30 (ii) The respondent.
31

32 (3) If appellate counsel has not yet been retained or appointed for the minor, when the
33 transcripts are certified as correct, the clerk must send that counsel's copies of the
34 transcripts to the district appellate project.
35

36 **(e) Augmenting or correcting the record**
37

38 (1) Except as provided in (2) and (3), rule 8.410 governs any augmentation or correction
39 of the record.
40

41 (2) An appellant must serve and file any motion for augmentation or correction within
42 15 days after receiving the record. A respondent must serve and file any such motion
43 within 15 days after the appellant's opening brief is filed.

1
2 (3) The clerk and the reporter must prepare any supplemental transcripts within 20 days,
3 giving them the highest priority.

4
5 (4) The clerk must certify and send any supplemental transcripts as required by (d).
6

7 **(f) Time to file briefs**
8

9 (1) The appellant must serve and file the appellant's opening brief within 30 days after
10 the record is filed in the reviewing court.

11
12 (2) Rule 8.412(b) governs the time for filing other briefs.
13

14 **(g) Extensions of time**
15

16 The superior court may not order any extensions of time to prepare the record or to file
17 briefs; the reviewing court may order extensions of time but must require an exceptional
18 showing of good cause.
19

20 **(h) Failure to file a brief**
21

22 Rule 8.412(d) applies if a party fails to timely file an appellant's opening brief or a
23 respondent's brief, but the period specified in the notice required by that rule must be 15
24 days.
25

26 **(i) Oral argument and submission of the cause**
27

28 (1) Unless the reviewing court orders otherwise, counsel must serve and file any request
29 for oral argument no later than 15 days after the appellant's reply brief is filed or due
30 to be filed. Failure to file a timely request will be deemed a waiver.

31
32 (2) The court must hear oral argument within 60 days after the appellant's last reply
33 brief is filed or due to be filed, unless the court extends the time for good cause or
34 counsel waive argument.
35

36 (3) If counsel waive argument, the cause is deemed submitted no later than 60 days after
37 the appellant's reply brief is filed or due to be filed.
38

39 **Advisory Committee Comment**
40

41 **Subdivision (d).** Under rule 8.71(c), the superior court clerk may send the record to the reviewing court
42 in electronic form.

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NUMBER: _____ NAME: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ EMAIL ADDRESS: _____ ATTORNEY FOR (name): _____	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council
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 a preponderance of the evidence that the youth 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

Page 1 of 1

- You or your attorney **must** fill in items 1 and 2 and sign this form at the bottom of the page. If possible, to help process your appeal, fill in items 5–7 on the reverse of this form.
- For most appeals, you must file a written notice of appeal within **60** days after rendition of the judgment or the making of the order being appealed or, in matters heard by a referee, within **60** days after the order of the referee becomes final. Read rule 8.406 of the California Rules of Court.
- To appeal an order transferring jurisdiction to the criminal court, you must file the notice of appeal within **30** days. Read rules 5.770(g) and 8.406(a)(4).
- To file an appeal of an order for transfer to a tribal court, you (1) may ask the juvenile court to stay (delay the effective date of) the transfer order and (2) must file the appeal before the transfer to tribal jurisdiction is finalized. Read rule 5.483 and the advisory committee comment.
- If you are not the county welfare department, district attorney, child, child's parent, or child's legal guardian, you may have a right to challenge a decision by the juvenile court, but only in very limited circumstances. You may need a court order granting you access to records in the juvenile case file. For more information, please see *Information on Requesting Access to Records for Persons With a Limited Right to Appeal* (form JV-291- INFO). You can get form JV-291-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.

- Date:

Page 1 of 2

CHILD'S NAME:	CASE NUMBER:
---------------	--------------

5. Appellant is the
- a. ☐ child.
 - b. ☐ mother.
 - c. ☐ father.
 - d. ☐ legal guardian.
 - e. ☐ de facto parent.
 - f. ☐ county welfare department.
 - g. ☐ district attorney.
 - h. ☐ child's tribe.
 - i. ☐ other (*state relationship to child or interest in the case*):
6. This notice of appeal pertains to the following child or children (*specify number of children included*):
- a. Name of child:
Child's date of birth:
 - b. Name of child:
Child's date of birth:
 - c. Name of child:
Child's date of birth:
 - d. Name of child:
Child's date of birth:
☐ Continued in Attachment 6.
7. The order appealed from was made under Welfare and Institutions Code (*check all that apply*):
- a. ☐ **Section 305.5** (transfer to tribal court)
☐ Granting transfer to tribal court ☐ Denying transfer to tribal court
 Dates of hearing (*specify*):
 - b. ☐ **Section 360** (declaration of dependency) ☐ Removal of custody from parent or guardian ☐ Other orders
☐ with review of section 300 jurisdictional findings
 Dates of hearing (*specify*):
 - c. ☐ **Section 366.26** (selection and implementation of permanent plan)
☐ Termination of parental rights ☐ Appointment of guardian ☐ Planned permanent living arrangement
 Dates of hearing (*specify*):
 - d. ☐ **Section 366.28** (order designating a specific placement after termination of parental rights in which a petition for extraordinary writ review that substantively addressed the specific issues to be challenged was timely filed and summarily denied or otherwise not decided on the merits)
 Dates of hearing (*specify*):
 - e. ☐ **Section 388** (request to change court order)
 Dates of hearing (*specify*):
 - f. ☐ Other appealable orders relating to dependency (*specify*):
 Dates of hearing (*specify*):
 - g. ☐ **Section 725** (declaration of wardship and other orders)
☐ with review of section 601 jurisdictional findings
☐ with review of section 602 jurisdictional findings
 Dates of hearing (*specify*):
 - h. ☐ **Section 707** (order transferring jurisdiction to criminal court)
 Dates of hearing (*specify*):
 - i. ☐ Other appealable orders relating to juvenile justice (*specify*):
 Dates of hearing (*specify*):

Appellate Procedure and Juvenile Law: Transfer of Jurisdiction to Criminal Court and Appeal from Transfer Orders

(Adopt Cal. Rules of Court, rule 8.417; amend rules 5.766, 5.768, 5.770, 8.50, 8.60, 8.63, 8.404, 8.406, 8.409, and 8.412; and revise forms JV-710 and JV-800)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	<p>First District Appellate Project by Jonathan Soglin, Executive Director</p> <p>On Behalf of: Lynelle Hee, Executive Director, Appellate Defenders, Inc.</p> <p>Patrick McKenna, Executive Director Sixth District Appellate Program</p> <p>Rick Lennon, Executive Director California Appellate Project, Los Angeles</p> <p>Laurel Thorpe, Executive Director Central California Appellate Program</p>	AM	<p>Appellate Projects’ Interest in Item SPR22-14</p> <p>The Court of Appeal projects are non-profit corporations created pursuant to California Rules of Court, rule 8.300(e), which contract with the Courts of Appeal through the Judicial Council of California, Appellate Court Services, to oversee the system of court-appointed counsel on appeal in their respective districts. The central goal of the offices is to improve the quality of indigent representation on appeal, assist the Court of Appeal in administering criminal, juvenile, and limited civil appeals by indigents who are entitled to the appointment of counsel at public expense. Their caseload covers criminal, juvenile delinquency and dependency, and civil commitment appeals, certain writs, and other proceedings requiring appointed counsel in the appellate courts.[FN 1: The Court of Appeal projects include the First District Appellate Project (FDAP), located in Oakland; California Appellate Project, Los Angeles (CAP-LA), serving the Second District; Central California Appellate Program (CCAP), located in Sacramento and serving the Third and Fifth Districts; Appellate Defenders, Inc. (ADI), located in San Diego and serving the Fourth District; and the Sixth District Appellate Program (SDAP), in San Jose.] These comments begin with responses to the Request for Specific Comments on page 6 of the Invitation to</p>	The committees note the commenter’s support for the proposal and appreciates the information on the role and perspective of the appellate projects.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

Appellate Procedure and Juvenile Law: Transfer of Jurisdiction to Criminal Court and Appeal from Transfer Orders

(Adopt Cal. Rules of Court, rule 8.417; amend rules 5.766, 5.768, 5.770, 8.50, 8.60, 8.63, 8.404, 8.406, 8.409, and 8.412; and revise forms JV-710 and JV-800)

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Commenter	Position	Comment	Committee Response
		Comment, followed by our suggestions for changes in the proposed language in specific rules.	
		<p>• Does the proposal appropriately address the stated purpose?</p> <p>Yes. The proposal appropriately addresses the stated twofold purpose of the proposed rules: (1) to amend transfer rules implementing Senate Bill 1391; and (2) to adopt rules of court implementing newly-enacted Welfare and Institutions Code [FN 2: All further statutory references are to the Welfare and Institutions Code unless otherwise noted.] section 801 which provides for appeal of transfer orders.</p>	The committees appreciate this response to its request for specific comments.
		Rules amending transfer rules implementing Senate Bill 1391.	
		We agree with the Committees' proposed amendment of rules implementing Senate Bill 1391. The modifications to rules 5.766 and 5.770 closely track the language of the new law, permitting a transfer petition for a person who was 14 or 15 years of age at the time of a section 707(b) offense only when that person was not apprehended until after the end of juvenile court jurisdiction.	The committees appreciate this response to its request for specific comments.
		We are also in agreement with amending all three rules to employ the term "youth" instead of "child," rendering them consistent with rule 5.502(46) which already defines "youth" as "a	The committees note the commenters' support for the change in terminology.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

Appellate Procedure and Juvenile Law: Transfer of Jurisdiction to Criminal Court and Appeal from Transfer Orders

(Adopt Cal. Rules of Court, rule 8.417; amend rules 5.766, 5.768, 5.770, 8.50, 8.60, 8.63, 8.404, 8.406, 8.409, and 8.412; and revise forms JV-710 and JV-800)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			person who is at least 14 years of age and not yet 21 years of age.”	
			We are in favor of the proposed new language in rule 5.770(b) to incorporate the holding in <i>C.S. v. Superior Court</i> (2018) 29 Cal.App.5th 1009 that a trial court considering a motion to transfer must make detailed findings and fully explain its reasoning for granting or denying the motion. Incorporating the <i>C.S.</i> holding will helpfully remind the bench to make adequate rulings. (We do, however, recommend changes below to more accurately reflect the language of the holding in that case.)	The committees concur that language incorporating the holding in <i>C.S. v. Superior Court</i> (2018) 29 Cal.App.5th 1009 is of value and address the specific suggestion below.
			Adoption of rules implementing section 801.	
			The Committees’ proposed rules faithfully implement section 801 providing for an appeal of an order transferring jurisdiction if a notice of appeal is filed within 30 days and requiring that the juvenile court grant a stay of the criminal court proceedings upon request.	The committees appreciate this feedback.
			<i>Is the new advisory committee comment to rule 8.404 regarding stays helpful?</i> Yes. Rule 8.404, governing stays in ordinary juvenile cases, prohibits a court from staying an order pending an appeal unless suitable provision is made for the maintenance, care, and custody of the child. The advisory comment states: “This rule does not apply to a court’s order under rule	The committees appreciate this feedback and recommend adding the new advisory committee comment.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

Appellate Procedure and Juvenile Law: Transfer of Jurisdiction to Criminal Court and Appeal from Transfer Orders

(Adopt Cal. Rules of Court, rule 8.417; amend rules 5.766, 5.768, 5.770, 8.50, 8.60, 8.63, 8.404, 8.406, 8.409, and 8.412; and revise forms JV-710 and JV-800)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			5.770(e)(2) staying the criminal court proceedings during the pendency of an appeal of an order transferring the minor from juvenile court to a court of criminal jurisdiction.” The comment is helpful to prevent confusion with newly-enacted rule 5.770(e)(2) governing stays in transfer proceedings.	
			<i>Does proposed new rule 8.417(c) appropriately specify the items to be included in the record on appeal?</i> Yes. We believe the proposed rule is broad enough to capture all items which should be included in the record on appeal. We are particularly pleased with the all-encompassing language of 8.417(c)(1)(C), which specifies “[a]ny document in written or electronic form.” Transfer hearings often involve a wide variety of documentary evidence (i.e. reports by experts, doctor evaluations/assessments; PowerPoint presentations, and emails to or from the court related to the case, etc.) which justifies such a broad rule	The committees appreciate this feedback and information regarding the types of documentary evidence that may be involved.
			Do juvenile referees hear transfer motions in a capacity other than as a temporary judge such that the rules need to include timing for review of their orders by a superior court judge, or can those provisions be removed from the rules? (See rules 5.770(g) and 8.406(a).)	The committees note that there appear to be differences in practice among the courts regarding whether referees hear these motions in a capacity other than as temporary judges, but have concluded that it is preferable to accommodate this possibility in the rule.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

Appellate Procedure and Juvenile Law: Transfer of Jurisdiction to Criminal Court and Appeal from Transfer Orders

(Adopt Cal. Rules of Court, rule 8.417; amend rules 5.766, 5.768, 5.770, 8.50, 8.60, 8.63, 8.404, 8.406, 8.409, and 8.412; and revise forms JV-710 and JV-800)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>Yes, juvenile referees do hear transfer motions in a capacity other than as a temporary judge such that the rules need to include timing for review of their orders by a superior court judge. We conducted an informal email survey of defenders in counties across California. Of those defenders who responded, most reported that their counties do not have juvenile referees at all. Of those counties that use referees, only one county—Los Angeles County—reported that juvenile referees hear transfer motions in a capacity other than as a temporary judge.</p> <p>That apparently one county reportedly has referees hearing transfer motions in a non-temporary judge capacity is ample reason for retaining proposed rules 5.770(g)(1) and 8.406(a). Another reason is that counties that do not currently employ referees at transfer hearings in a capacity other than as a temporary judge could do so in the future.</p>	
			A. Implementation of the new jurisdictional provisions of Senate Bill 1391, amending rules 5.766, 5.768, and 5.770.	
			<p>We agree with the Committees' proposed rule amendments implementing SB 1391. The modifications to rules 5.766 and 5.770 closely track the language of the new law, permitting a transfer petition for a person who was 14 or 15 years of age at the time of a Welfare and Institutions Code section 707(b) offense only</p>	<p>The committees note the commenters' support for the implementation of the limits on transfer eligibility.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

Appellate Procedure and Juvenile Law: Transfer of Jurisdiction to Criminal Court and Appeal from Transfer Orders

(Adopt Cal. Rules of Court, rule 8.417; amend rules 5.766, 5.768, 5.770, 8.50, 8.60, 8.63, 8.404, 8.406, 8.409, and 8.412; and revise forms JV-710 and JV-800)

All comments are verbatim unless indicated by an asterisk (*).

Commenter	Position	Comment	Committee Response
		when that person was not apprehended until after the end of juvenile court jurisdiction.	
		For the sake of precision, we are also in agreement with amending all three rules to employ the term “youth” instead of “child.” As noted, rule 5.502(46) defines “youth” as “a person who is at least 14 years of age and not yet 21 years of age.”	The committees note the commenters’ support for the change in terminology.
		<p>We are grateful that the committees have included new language in rule 5.770(b)(2) incorporating the holding in <i>C.S. v. Superior Court</i>(2018) 29 <i>Cal.App.5th</i> 1009 (C.S.). <i>This amendment will helpfully remind the bench that in deciding a motion to transfer, it must make detailed findings and fully explain its reasoning for granting or denying the motion.</i></p> <p><i>However, we recommend using the language of C.S.[FN 4: “[W]e hold that the foregoing principles require a juvenile court to clearly and explicitly ‘articulate its evaluative process’ by detailing ‘how it weighed the evidence’ and by ‘identify[ing] the specific facts which persuaded the court’ to reach its decision. ([In re] Pipinos [(1982)] 33 Cal.3d [189,]198.)” (C.S. v. Superior Court (2018) 29 Cal.App.5th at p. 1029.)] which is more exacting, and recommend modifying the proposed language, as follows:</i></p> <p>The court must state on the record the basis for its decision. It must clearly and explicitly articulate its evaluative process, by detailing how it weighed</p>	<p>The committees appreciate this suggestion and have adopted it in a modified form to reflect the language of the holding without redundancy to read: “The court must state on the record the basis for its decision, by explicitly articulating its evaluative process, detailing how it weighed the evidence, and identifying the specific factors on which the court relied to reach its decision.”</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

Appellate Procedure and Juvenile Law: Transfer of Jurisdiction to Criminal Court and Appeal from Transfer Orders

(Adopt Cal. Rules of Court, rule 8.417; amend rules 5.766, 5.768, 5.770, 8.50, 8.60, 8.63, 8.404, 8.406, 8.409, and 8.412; and revise forms JV-710 and JV-800)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			the evidence and by identifying the specific facts which persuaded the court to reach its decision.	
			<p>B. Implementation of the appellate provisions of section 801, creating rule 8.417 and amending rule 5.770 and several appellate rules.</p> <p>We agree with the Committees' proposed amendment of rules creating rule 8.417 and amending rule 5.770 and several appellate rules. We recommend a slight change to rule 5.770(d)(3) regarding advisement of rights after a finding that a youth should be transferred to criminal court jurisdiction. As now proposed, the rule does not advise of the right under rule 5.770(e)(2) to a stay of a transfer order pending appeal. We suggest adding that advisement, as follows: [...] The court must advise the youth of the right to appeal, of the necessary steps and time for taking an appeal, the right to a stay, and of the right to the appointment of counsel if the youth is unable to retain counsel. We believe that adding this advisement would helpfully inform litigants at the earliest opportunity of the availability of a stay of a transfer order pending appeal.</p>	The committees agree that the advisement should include the right to a stay and have modified the rule accordingly.
			<p>C. Notice of Appeal—Juvenile</p> <p>We agree with the Committee's proposed modifications to the form JV-800 notice of appeal.</p>	The committees appreciate the concern for comprehensive instructions but given that use of a referee is very uncommon and that all parties to

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Appellate Procedure and Juvenile Law: Transfer of Jurisdiction to Criminal Court and Appeal from Transfer Orders

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			<p>We suggest modifications to the proposed instructions on page 20, specifying deadlines governing appeals from a referee's decision to transfer jurisdiction to the criminal court. We also suggest adding information about the availability of a stay of transfer orders.</p> <p>To appeal an order transferring jurisdiction to the criminal court, you must file the notice of appeal within 30 days. Read rules 5.770(g) and 8.406(a)(4). If the matter is heard by a referee not acting as a temporary judge, a notice of appeal must be filed within 30 days after the referee's order becomes final or after the denial of an application for rehearing of the referee's decision to transfer jurisdiction to the criminal court. Read rules 5.770(g) and 8.406(a)(4). You may ask for a stay of transfer proceedings pending the appeal. Read rule 5.770(e)(2).</p> <p>Specifying deadlines governing appeals from a referee's decision to transfer jurisdiction would avert filing errors and be consistent with the immediately-preceding section on ordinary appeals which specifies deadlines for matters heard by a referee. We believe that an advisement of the availability of a stay during the pendency of a transfer appeal would be helpful to litigants in light of the recentness of this rule.</p>	<p>these cases are represented by counsel the committees are not adding in this specific language on the timing when the case is heard by a referee because it will rarely apply and would make the instructions unnecessarily long. The committees concur that adding in the ability to request a stay is of value in most cases and have made this change to the form.</p>
2.	Orange County Bar Association	A	[No specific comment provided.]	No response required.

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	Commenter	Position	Comment	Committee Response
	by Daniel S. Robinson, President			
3.	Pacific Juvenile Defender Center by Marketa Sims, Executive Board Member	A	<p>PJDC's Interest PJDC is a regional affiliate of the Washington, D.C. -based National Juvenile Defender Center (NJDC) (Recently renamed "the Gault Center.") PJDC provides support to more than 1600 juvenile trial lawyers, appellate counsel, law school clinical programs and non-profit law centers throughout California and across the country. PJDC works to improve the quality of legal representation for youth and promote the development of law and policies that increase the success of system involved youth and that reduce unnecessary confinement. PJDC is active in the Legislature and as amicus counsel before the California Courts of Appeal and the California Supreme Court.</p>	The committees appreciate the expertise that PJDC brings to bear on this proposal.
			In response to the Judicial Council's Request for Specific Comments, PJDC comments as follows.	
			1. The proposal does appropriately address the stated purpose.	The committees appreciate the support for the proposal meeting its objectives.
			2. The new advisory committee comment to rule 8.404 is helpful because it clarifies that pursuant to Welfare & Institutions Code section 801(b), the minor has the right to a stay upon request and without further inquiry.	The committees appreciate this feedback.
			3. Proposed new rule 8.417(c) does appropriately specify the items to be included in the record on	The committees appreciate this insight and feedback.

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Appellate Procedure and Juvenile Law: Transfer of Jurisdiction to Criminal Court and Appeal from Transfer Orders

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			appeal and does so broadly enough to make it clear that exhibits are to be included in the record, which is important given the often informal procedures in juvenile court.	
			4. Yes, in Los Angeles County, juvenile referees hear transfer motions in a capacity other than as a temporary judge. That is, juvenile referees routinely hear transfer motions without an express stipulation by the minor that the juvenile referee is acting as a temporary judge. Roughly a third of the juvenile bench officers are referees, who require a stipulation to act as a temporary judge. Since these bench officers in Los Angeles are “cross-designated” as both referees and temporary judges by blanket order, confusion often arises as to whether referees have purported to act as temporary judges without a proper stipulation. In Los Angeles, there is no regular procedure by the juvenile referees to obtain a stipulation to act as a temporary judge and the referees do not comply with Cal. Rule of Court, rule 2.816, requiring notice to the minor that the referee is acting as a temporary judge and notice that the minor has the right to have the transfer motion heard by a judge of the superior court. Further, juvenile referees have refused to respond when asked by minor’s counsel to put on the record whether they are purporting to act as referees or temporary judges. Many referees also do not comply with Welfare & Institutions Code section 248(a), requiring a	The committees note that there appear to be some differences among the courts as to the use of referees in these proceedings, and agree that the rule should include the time for trial court review of a decision by a referee.

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Appellate Procedure and Juvenile Law: Transfer of Jurisdiction to Criminal Court and Appeal from Transfer Orders

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			juvenile referee to provide the minor with written findings on the transfer order. As a result of this noncompliance with Cal. Rules of Court, rule 2.816 and Welfare & Institutions Code 248(a), whether the referee has acted as a referee or a temporary judge may, itself, be a contested issue, which should be resolved in the first instance by a superior court judge. Indeed, prior to the enactment of AB 624 the issue of the adequacy of notice by a juvenile referee of his intent to act as a temporary judge at a transfer hearing was raised by petition for writ of mandate in the court of appeal, but not resolved. Accordingly, in light of the widespread practice in Los Angeles County of referees hearing transfer motions, it is necessary to build in time for the minor to seek review of the transfer decision by a superior court judge pursuant to Welfare & Institutions Code section 252 in proposed rules of court 5.770(g) and 8.406(a.)	
			Additional Comments	
			1. PJDC suggests that Rule 5.770(b)(2) be further amended to clearly state the holding of C.S. v. Superior Court (2018) 29 Cal.App.5th that a trial judge considering a motion to transfer must make detailed findings and fully explain its reasoning for granting or denying the motion, as stated at p. 3 of the Invitation of the Comment. Specifically, PJDC suggests that the rule read:	The committees appreciate this suggestion and have adopted it in a modified form to reflect the language of the holding without redundancy to read: “The court must state on the record the basis for its decision, by explicitly articulating its evaluative process, detailing how it weighed the evidence, and identifying the specific factors on which the court relied to reach its decision.”

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Appellate Procedure and Juvenile Law: Transfer of Jurisdiction to Criminal Court and Appeal from Transfer Orders

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			The youth should be transferred to the jurisdiction of the criminal court based on an evaluation of all of the criteria in section 707(a)(3) as provided in that section. The court must state on the record the basis for its decision, by explicitly articulating its evaluative process, detailing how it weighed the evidence, and identifying the specific factors on which the court relied to reach its decision.	
			2. PJDC further suggests that rule 5.770(d)(3) be amended to add “and the right to a stay” to the advisement the juvenile court gives to the youth upon a decision to transfer the youth’s case for prosecution in adult court. This would ensure that both the youth and counsel are apprised that the youth has a right to a stay upon request. Thus the last line of the rule would read: The court must advise the youth of the right to appeal, of the necessary steps and time for taking an appeal, of the right to the appointment of counsel if the youth is unable to retain counsel, and the right to a stay.	The committees agree that it would be beneficial to include the right to a stay in the advisement and have modified the rule accordingly.
4.	Superior Court of Los Angeles County by Bryan Borys,	A	Is the new advisory committee comment to rule 8.404 regarding stays helpful? Yes.	The committees appreciate this feedback.

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	Commenter	Position	Comment	Committee Response
			Does proposed new rule 8.417(c) appropriately specify the items to be included in the record on appeal? Yes.	The committees appreciate this feedback.
			Do juvenile referees hear transfer motions in a capacity other than as a temporary judge such that the rules need to include timing for review of their orders by a superior court judge, or can those provisions be removed from the rules? (See rules 5.770(g) and 8.406(a).) No, a referee does not hear transfer motions in a capacity other than a temporary judge.	The committees appreciate this information, but note that there are differences in practice among the courts as to whether referees always sit as temporary judges when hearing transfer motions. Therefore, the committees have kept the rule timing explicit on this point to ensure that there is enough time to seek a review by a judge of a referee's decision before filing a notice of appeal.
5.	Superior Court Riverside County by Susan Ryan, Chief Deputy of Legal Services	A	Does the proposal appropriately address the stated purpose? Yes, the proposal seems to address the jurisdictional provisions of SB 1391 and the appellate issues from Section 801.	The committees appreciate the support for the proposal meeting its objectives.
			Is the new advisory committee comment to rule 8.404 regarding stays helpful? Yes, the comment is helpful.	The committees appreciate this feedback.
			Does the proposed new rule 8.417(c) appropriately specify the items to be included in the record on appeal? Yes, the new rule is helpful and provides specific items.	The committees appreciate this feedback.
			Do juvenile referees hear transfer motions in a capacity other than as a temporary	The committees appreciate this feedback and note that, while it does appear uncommon to have

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			judge such that the rules need to include timing for review of their orders by a superior court judge, or can those provisions be removed from the rules? (See rules 5.770(g) and 8.406(a)). This is not applicable to our court, as we do not have juvenile referees.	referees hear transfer motions, it may be the practice in some jurisdictions. Thus it would be unwise to remove the referee specific provisions of the rules.
			Would the proposal provide cost savings? If so, please quantify. No.	The committees note that no cost savings are likely.
			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? Some training for appeals staff would be necessary. New codes for the new JV-800 form would be needed. Court staff and judges would need to be made aware of the changes.	The committees have noted these likely impacts on the courts in their report to the council and note that they are largely a result of the change in the statute rather than the proposal itself.
			Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes	The committees note that the timing appears to be sufficient to allow for implementation of the proposal.
			How will would this proposal work in courts of different sizes? The changes seem minimal and should work for courts of any size.	The committees appreciate that the changes in the proposal which are designed to comply with the new appellate rights are not overly burdensome on courts of any size.

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6.	Superior Court of San Diego County by Mike Roddy, Court Executive Officer	AM	Does the proposal appropriately address the stated purpose? Yes.	The committees appreciate the support for the proposal meeting its objectives.
			Is the new advisory committee comment to rule 8.404 regarding stays helpful? Yes. WIC 801 requires the stay if requested by the youth.	The committees appreciate this feedback.
			Does proposed new rule 8.417(c) appropriately specify the items to be included in the record on appeal? Yes.	The committees appreciate this feedback.
			Do juvenile referees hear transfer motions in a capacity other than as a temporary judge such that the rules need to include timing for review of their orders by a superior court judge, or can those provisions be removed from the rules? (See rules 5.770(g) and 8.406(a).) Referees do not hear transfer motions in San Diego County.	The committees appreciate this feedback and note that while it does appear uncommon to have referees hear transfer motions, it may be the practice in some jurisdiction and thus it would be unwise to remove the referee specific provisions of the rules.
			Would the proposal provide cost savings? If so, please quantify. No, but it is required to implement the new law.	The committees note that no cost savings are likely and appreciate the recognition that the proposal is required to implement the law.
			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	The committees have noted these likely impacts on the courts in their report to the council.

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	Commenter	Position	Comment	Committee Response
			management systems, or modifying case management systems? Train judicial officers and clerks, particularly the appeals clerks, on the new timelines and requirements. We may need some new minute order codes.	
			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	The committees note that the timing appears to be sufficient to allow for implementation of the proposal.
			How well would this proposal work in courts of different sizes? It should work in San Diego County.	The committees appreciate that the changes in the proposal which are designed to comply with the new appellate rights are not overly burdensome on courts of any size.
			Other Comments JV-800, item 7i: It should read “juvenile justice” instead of “juvenile delinquency.”	The committees appreciate this suggestion to update the terminology to reflect the preferred language of the council and have made this revision.
7.	Superior Court of Stanislaus County by Sandy Almansa, Court Supervisor, Juvenile Dependency Division	A	Does the proposal appropriately address the stated purpose? Yes	The committees appreciate the support for the proposal meeting its objectives.
			Does proposed new rule 8.417(c) appropriately specify the items to be included in the record on appeal? Yes	The committees appreciate this feedback.
			Do juvenile referees hear transfer motions in a capacity other than as a temporary judge such that the rules need to include timing for review of their orders by a superior court judge, or can those	The committees appreciate this feedback and note that while it does appear uncommon to have referees hear transfer motions, it may be the practice in some jurisdictions and thus it would be

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			provisions be removed from the rules? (See rules 5.770(g) and 8.406(a).) Referees do not hear juvenile cases in this court.	unwise to remove the referee specific provisions of the rules.
			Would the proposal provide cost savings? If so, please quantify. No	The committees note that no cost savings are likely.
			<p>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?</p> <p>There will need to be significant procedural rewrites in the juvenile justice clerk's office and in the juvenile appellate clerk's assignments. Staffing for appellate clerks may need to be increased due to the expedited timeline (20 days for clerks/reporters transcripts) and expectation that the new rights will likely result in more appeals being filed, per page 5-“Fiscal and Operational Impacts.”</p> <p>Both the expedited timeline and the new rights will increase the number of filings and decrease the time for the record to be filed in the Appellate Court. We will need to assign additional staff to be trained on juvenile delinquency appeals to be able to absorb the</p>	The committees have noted these likely impacts on the courts in their report to the council. The committees also note that in terms of the workload for the expedited timeline the impact on any specific court is likely to be small as in 2020, only 25 transfer motions were granted statewide, and this is the pool of youth who would be eligible to seek appellate review under the new rule provisions.

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			increase in filings and the shortened time for filing.	
			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Possibly	The committees have taken note of the uncertainty about the time required to implement the proposal and note that these cases are relatively uncommon statewide which should provide courts with some breathing room to implement without undue burden.
			How well would this proposal work in courts of different sizes? Unknown. In a court with limited resources, it could be difficult to manage the increased workload under expedited so it may impact staffing levels depending on the number of appeals filed.	The committees appreciate that there is always uncertainty around the impact of procedural change, but as noted above, there were only 25 of these motions granted in 2020. Thus small courts are likely to have few if any of these appeals to manage.

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