



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 23-097

For business meeting on May 12, 2023

Title

Juvenile Law: Transfer of Jurisdiction to Criminal Court

Agenda Item Type

Action Required

Effective Date

September 1, 2023

Rules, Forms, Standards, or Statutes Affected

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

Date of Report

April 20, 2023

Recommended by

Family and Juvenile Law Advisory
Committee

Hon. Stephanie E. Hulse, Cochair

Hon. Amy M. Pellman, Cochair

Contact

Tracy Kenny, 916-263-2838

tracy.kenny@jud.ca.gov

Stephanie Lacambra, 415-865-7481

stephanie.lacambra-t@jud.ca.gov

Executive Summary

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

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective September 1, 2023:

1. Amend California Rules of Court, rule 5.770 to reflect the higher evidentiary standard and the requirement for the court to state its reasons for finding that a youth is not amenable to rehabilitation while under the jurisdiction of the juvenile court; and

2. Revise *Order to Transfer Juvenile to Criminal Court Jurisdiction* (form JV-710) to reflect the higher standard of proof and the finding required by the court to order a transfer.

The proposed amended rule and revised form are attached at pages 4–6.

Relevant Previous Council Action

The Judicial Council adopted California Rules of Court, rule 5.770 effective January 1, 1991, as rule 1482, which was renumbered effective January 1, 2007. This rule has been amended numerous times—most recently effective January 1, 2023, to implement recent legislative changes limiting the use of transfer motions to youth ages 16 or 17, in most cases, and providing direct appeal rights to youth for whom the court has made a transfer order.

Order to Transfer Juvenile to Criminal Court Jurisdiction (form JV-710) was adopted by the council effective January 1, 2006, with the title *Juvenile Fitness Hearing* and was made optional effective January 1, 2012. It was significantly revised effective May 22, 2017, to implement the changes enacted by Proposition 57 and then again effective January 1, 2023, to implement the age restrictions on the use of transfer orders in Senate Bill 1391 (Lara; Stats. 2018, ch. 1012).

Analysis/Rationale

Background

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

Amendments to rule 5.770

Rule 5.770(a) would be amended to update the standard of proof for the prosecution to a clear and convincing evidence standard. Rule 5.770(b) would be amended to add paragraph (3), which states the new required court finding regarding whether the youth is amenable to rehabilitation while under the jurisdiction of the juvenile court. The requirements for the court to state its reasoning on the record would be relocated to rule 5.770(c), which currently requires the court to specify the basis for its order. The advisory committee comment to rule 5.770 would also be amended accordingly, to add AB 2361 to the comment on the intent of subdivision (b) and to relocate the comment on stating the basis of the order to be a comment on subdivision (c).

Revisions to *Order to Transfer Juvenile to Criminal Court Jurisdiction* (form JV-710)

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

Policy implications

New legislation AB 2361 (Bonta, Mia; Stats. 2022, ch. 330), which governs the transfer of juveniles to a court of criminal jurisdiction, now requires the juvenile court to find by clear and convincing evidence that the minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court in order to transfer the minor to a court of criminal jurisdiction.

Comments

This proposal was circulated for public comment from December 9, 2022, to January 20, 2023, as part of the winter 2023 rules and forms comment cycle. Two organizations and two superior courts submitted comments on this proposal. All commenters agreed with the proposal as drafted. A chart with the full text of the comments received and the committee's responses is attached at pages 7–10.

Alternatives considered

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

Fiscal and Operational Impacts

The costs to translate and reproduce the new forms would be minor. Also, the two courts that commented identified minor costs to train staff and update minute order codes. The heightened standard of proof may result in the filing of fewer motions to transfer youth to courts of criminal jurisdiction by the prosecuting attorney.

Attachments and Links

1. Cal. Rules of Court, rule 5.770, at pages 4–5
2. Form JV-710, at page 6
3. Chart of comments, at pages 7–10
4. Link A: Assem. Bill 2361,
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2361

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

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

(a) Burden of proof (§ 707)

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

(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 offense listed in section 707(b) and was not apprehended prior to the end of juvenile court jurisdiction;
- (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)(A)–(E) as provided in that section; ~~and 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.~~
- (3) The youth is not amenable to rehabilitation while under the jurisdiction of the juvenile court.

(c) Basis for order of transfer

If the court orders a transfer of jurisdiction to the criminal court, the court must recite the basis for its decision in an order entered on the minutes. 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. This statement must include the reasons supporting the court's finding that the minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court.

(d)–(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; and Assembly Bill 2361 (Bonta, Mia; Stats. 2022, ch. 330). 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 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). 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.

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

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 JV-710.v4.030323.cz
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
Case Name: _____	
ORDER TO TRANSFER JUVENILE TO CRIMINAL COURT JURISDICTION (Welfare and Institutions Code, § 707)	CASE NUMBER: _____

1. a. Date of hearing: _____ Dept.: _____ Room: _____
 b. Judicial officer (name): _____
 c. Persons present:
☐ Youth ☐ Youth's attorney (name): _____
☐ Deputy District Attorney (name): _____ ☐ Other: _____
2. ☐ The court has read and considered ☐ the petition and report of the probation officer ☐ other relevant evidence.
3. **THE COURT FINDS (check one)**
Welfare and Institutions Code section 707
 a. ☐ The youth was 16 years old or older at the time of the alleged felony offense; or
 b. ☐ The individual was 14 or 15 years of age at the time of the alleged offense, the alleged offense is an offense listed in Welfare and Institutions Code section 707(b), and the individual was not apprehended before the end of juvenile court jurisdiction.
4. **AFTER CONSIDERING EACH OF THE TRANSFER OF JURISDICTION CRITERIA, THE COURT ALSO FINDS AND ORDERS**
 The court has considered each of the criteria in Welfare and Institutions Code section 707(a)(3), has documented its findings on each of the criteria on the record, and based on those findings makes the following orders:
- a. ☐ The transfer motion is denied. The youth is retained under the jurisdiction of the juvenile court.
 The next hearing is on (date): _____ at (time): _____
 for (specify): _____
- b. ☐ The transfer motion is granted. The prosecutor has shown by clear and convincing evidence that the youth is not amenable to rehabilitation while under the jurisdiction of the juvenile court and should be transferred to the jurisdiction of the criminal court.
- (1) ☐ The matter is referred to the district attorney for prosecution under the general law.
 (2) ☐ The youth is ordered to appear in criminal court on (date): _____ at (time): _____
 in Department: _____
- (3) ☐ The petition filed on (date): _____ is dismissed without prejudice on the appearance date in (2).
 (4) ☐ The youth is to be detained in ☐ juvenile hall ☐ county jail (Welfare and Institutions Code section 207.1).
 (5) ☐ Bail is set in the amount of: \$ _____
 (6) ☐ The youth is released ☐ on own recognizance ☐ to the custody of: _____

Date: _____

JUDICIAL OFFICER

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Juvenile Law: Transfer of Jurisdiction to Criminal Court (Amend Cal. Rules of Court, rule 5.770; revise form JV-710)

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

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association By Michael A. Gregg, President	A	Accurately reflects changes to WIC 707 changing standard from preponderance to clear and convincing and adding requirement that court find minor is not amenable to rehabilitation before transfer to adult court.	The committee appreciates the commenters agreement with the approach taken.
			Based on caselaw, also appropriately adds due process requirement that the court must state on the record not only its basis for the decision but its evaluative process by detailing how it weighed the evidence and by identifying the specific facts which persuaded it to reach a decision to transfer the minor.	The committee notes that this change to incorporate caselaw into the rule and form was adopted effective January 1, 2022, but has been updated to reflect the recent legislative change.
			The proposal appropriately addresses the stated purpose.	The committee concurs that the proposal accurately implements the recent legislative change.
2.	Pacific Juvenile Defender Center By Brooke Harris, Executive Director and Laurel Arroyo, President	A	We write with comments related to the proposed amendment to rule 5.770 of the California Rules of Court, and the proposed revision to the <i>Order to Transfer Juvenile to Criminal Court Jurisdiction (Welfare and Institutions Code, § 707)</i> (form JV-710).	The committee appreciates the review of this proposal by key stakeholders in the juvenile court.
			The Pacific Juvenile Defender Center (PJDC) was founded in 1999 as an affiliate of the National Juvenile Defender Center (now the Gault Center) with an overall mission to promote justice for all youth by ensuring excellence in juvenile defense and advocating for systemic reforms to the delinquency system. Today, PJDC has a	

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

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	Commenter	Position	Comment	Committee Response
			membership of over 1,600 defenders and advocates across California. To further its mission, PJDC engages its members through training and technical assistance, communications and outreach, research, and policy and legal reform.	
			We strongly support the proposed changed to rule 5.770, and believe that the draft language accurately reflects the change in the standard of proof created by the passage of Assembly Bill 2361 (Bonta; Stats. 2022, ch 330). We commend the Family and Juvenile Law Advisory Committee for this language, and urge the Judicial Council to adopt the proposed rule as currently written. We have no comments on the proposed changed to form JV-710.	The committee appreciates the support of the commenter and is putting forward the proposal as it circulates for comment as suggested by the commenter.
3.	Superior Court of Riverside County By Susan Ryan, Chief Deputy Legal Services	A	Does the proposal appropriately address the stated purpose? The amendment to Rule 5.770 and the revision to the JV-710 form makes it easier for the court to state that the prosecution has shown by clear and convincing evidence that the youth is not amenable to rehabilitation while under the juvenile court's jurisdiction.	The committee concurs that the proposal will effectively implement the heightened standard of proof.
			Would the proposal provide cost savings? If so, please quantify? No.	The committee notes that the proposal will not achieve cost savings but is required to make the rule and form legally accurate.
			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	The committee takes note of these impacts which are driven by the legislative changes.

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			describe), changing docket codes in case management systems, or modifying case management systems? Minimal training would be needed for courtroom staff to understand the purpose and changes to the JV-710 form and updated associated minute orders. New minute order code will need to be created in the case management system that would have the “clear and convincing” language.	
			Would 4 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes	The committee is pleased that the proposal can be implemented within the calendar year so that the rules and forms are made accurate.
			How well would this proposal work in courts of different sizes? The proposal would likely work the same for any size court.	The committee agrees that courts of all sizes can implement this proposal.
4.	Superior Court of San Diego County By Mike Roddy, Executive Officer	A	<ul style="list-style-type: none"> Does the proposal appropriately address the stated purpose? Yes. The changes are necessary as a result of a change in the law. Would the proposal provide cost savings? No. 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? Train judges and staff; 	<p>The committee concurs that the proposal accurately implements the recent legislative change.</p> <p>The committee notes that the proposal will not achieve cost savings but is required to make the rule and form legally accurate.</p> <p>The committee takes note of these impacts which are driven by the legislative changes.</p>

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	Commenter	Position	Comment	Committee Response
			create minute order codes. (This has already been done in San Diego.)	
			• Would four months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	The committee is pleased that the proposal can be implemented within the calendar year so that the rules and forms are made accurate.
			• How well would this proposal work in courts of different sizes? It should work in courts of different sizes.	The committee agrees that courts of all sizes can implement this proposal.

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