



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: May 18–19, 2017

Title

Juvenile Law: Implementation of Proposition 57, the Public Safety and Rehabilitation Act of 2016

Agenda Item Type

Action Required

Effective Date

May 22, 2017

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rules 4.116, 5.664, 5.766, 5.768, and 5.770; repeal rule 5.772; revise forms JV-600, JV-635, JV-642, JV-710, and JV-735

Date of Report

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Recommended by

Family and Juvenile Law Advisory
Committee

Hon. Jerilyn Borack, Cochair

Hon. Mark A. Juhas, Cochair

Executive Summary

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council amend or repeal six California Rules of Court and revise five forms to be consistent with the recently enacted provisions of Proposition 57, the Public Safety and Rehabilitation Act of 2016.

Proposition 57, which became effective on November 9, 2016, substantially amends the process by which juvenile offenders may be transferred to the jurisdiction of the criminal court by (1) eliminating the authority of prosecutors to directly file petitions in criminal court, and (2) requiring that the juvenile court hold a hearing and determine if a transfer is appropriate.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective May 22, 2017:

1. Amend rule 4.116 of the California Rules of Court concerning certification to juvenile court to delete obsolete statutory references;
2. Amend rule 5.664 of the California Rules of Court concerning training for children's counsel in delinquency proceedings to update terminology from "fitness" to "transfer of jurisdiction to criminal court";
3. Amend rules 5.766, 5.768, and 5.770 of the California Rules of Court concerning the procedures for transfer of cases from juvenile to criminal court jurisdiction to conform them to the revisions in Proposition 57;
4. Repeal rule 5.772 of the California Rules of Court concerning specified juvenile fitness hearings because its provisions are obsolete;
5. Revise *Promise to Appear—Juvenile Delinquency (Juvenile 14 Years or Older)* (form JV-635) to replace the words "police officer" with "peace officer" to be consistent with the authorizing statute;
6. Revise and retitle *Juvenile Fitness Hearing Order* (form JV-710) to *Order to Transfer Juvenile to Criminal Court Jurisdiction (Welfare and Institutions Code, § 707)* to conform the form to the changes enacted by Proposition 57; and
7. Revise *Juvenile Wardship Petition* (form JV-600), *Initial Appearance Hearing—Juvenile Delinquency* (form JV-642), and *Juvenile Notice of Violation of Probation* (form JV-735) to delete obsolete statutory references and references to juvenile fitness hearings.

The text of the amended and repealed rules, and the revised forms are attached at pages 11–28.

Previous Council Action

The Judicial Council adopted rules 5.766, 5.768, 5.770, and 5.772 effective January 1, 1991, as rules 1480, 1481, 1482, and 1483 respectively, and they were renumbered effective January 1, 2007. Rule 4.116 was adopted effective January 1, 1991, as rule 241.2, and renumbered and amended January 1, 2001. These rules have been amended numerous times, most substantially effective January 1, 2001, to implement the changes enacted by Proposition 21.

The Judicial Council adopted *Juvenile Wardship Petition* (form JV-600) effective January 1, 1993, and it has been revised numerous times, most recently effective July 1, 2016, to reflect changes in record sealing law. *Promise to Appear—Juvenile Delinquency (Juvenile 14 Years or Older)* (form JV-635) was adopted effective January 1, 2006. *Initial Appearance Hearing—Juvenile Delinquency* (form JV-642) was adopted for mandatory use, effective January 1, 2006. It was made optional effective January 1, 2012, and last revised effective January 1, 2016. *Juvenile Fitness Hearing Order (Welfare and Institution Code, § 707)* (form JV-710) was

adopted by the council effective January 1, 2006, and made optional effective January 1, 2012. *Juvenile Notice Of Violation Of Probation* (form JV-735) was adopted effective January 1, 2006, and changed from an attachment to the JV-600 petition to a standalone notice form effective January 1, 2012.

Rationale for Recommendation

Proposition 57 changes process for transfer to criminal court

Proposition 57 amends 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 accomplish this, the proposition repeals all of Welfare and Institutions Code section 602(b), which provided that certain serious and violent felonies were to be prosecuted in criminal court, as well as all of section 707(d), which authorized the district attorney to directly file an accusatory pleading involving certain minors in criminal court. Because the proposition eliminates the ability of the prosecutor to direct file a case in criminal court, it also makes obsolete the reverse remand provisions of Penal Code section 1170.17 that allow a criminal court to consider whether a minor convicted of an offense that was not eligible for direct file should be sentenced under the juvenile court law. However, it may be relevant to cases currently pending that were direct filed in criminal court before Proposition 57 was enacted.

In addition, the proposition substantially simplifies the existing standards for the juvenile court to employ when determining whether a minor's case should be heard in the criminal court. The prior version of section 707 required the juvenile court to evaluate whether the minor is "a fit and proper subject to be dealt with under the juvenile court law." The revisions to section 707 enacted by Proposition 57 instead ask the court to consider simply whether "the minor should be transferred to a court of criminal jurisdiction." Thus, in section 707, the concept of fitness has been eliminated and replaced with the term "transfer."

Under the prior statutory scheme, some minors were subject to a presumption of unfitness for juvenile court adjudication based on their age and/or prior offense history. Proposition 57 eliminates all of those presumptions and provides the court with one set of criteria to apply in a determination of whether "the minor should be transferred to a court of criminal jurisdiction." The criteria are those currently found in section 707(a), with broad discretion given to the court to evaluate and weigh each factor. Minors who may be subject to a motion to transfer jurisdiction to criminal court are those who are either:

- Alleged to have committed a felony when 16 years of age or older; or
- Alleged to have committed an offense listed in section 707(b) at age 14 or 15.

If the juvenile court orders that jurisdiction over the minor be transferred to the criminal court, the court must "recite the basis for its decision in an order entered upon the minutes." In

addition, the court may not take a plea in any case in which a hearing has been noticed to hear a motion for the transfer of jurisdiction.

Recent legislation provides guidance for the court on evaluating transfer criteria

Senate Bill 382,¹ enacted in 2015, amended section 707 to add guidance on each of the statutory criteria that were to guide the decision on whether to transfer jurisdiction, and while that guidance remains in the amended version of section 707 enacted by Proposition 57, it has not been incorporated into the council's rules and forms to implement section 707. The guidance added by SB 382 directs the court to focus on the unique developmental capacity of young people and to examine the extent to which prior system involvement has been adequate at meeting the child's needs. While Proposition 57 significantly streamlined section 707, it left this guidance in place.

Amended and repealed rules on transfer to criminal court

The current rules that govern the procedures to be followed when the juvenile court is asked to determine whether a child's case should be heard in juvenile or criminal court are rules 5.766, 5.768, 5.770, and 5.772. Three of these rules (5.766, 5.768, and 5.770) need to be amended to reflect the new terminology and provisions of Proposition 57. The key recommended changes to the rules would:

- Eliminate references to fitness and amenability to handling under the juvenile court law and replace them with a focus on whether the child should be retained under juvenile court jurisdiction or transferred to criminal court jurisdiction;
- Clarify that the court has broad discretion to weigh the existing statutory criteria in making its order;
- Require the court to set forth its reasons for making a transfer order in its minute order; and
- Add the requirement that no plea be taken after a motion for transfer has been noticed, and that no plea that has been entered be considered as evidence at a transfer hearing.

Rule 5.772 would be revoked in its entirety since the provisions of law that it seeks to implement have been repealed by Proposition 57, and it is therefore obsolete.

Amended criminal law rule

Rule 4.116, which addresses when a case is filed in criminal court and the court determines that the defendant is a minor—and thus the case needs to be certified to juvenile court—needs to be amended to eliminate some obsolete statutory references in subdivision (a) of the rule.

¹ Sen. Bill 382 (Lara); Stats. 2015, ch. 234.

Updated order form for transfer to criminal court

The current optional order form for use after a hearing under section 707 is form JV-710, *Juvenile Fitness Hearing Order*. This form would be retitled *Order to Transfer Juvenile to Criminal Court Jurisdiction (Welfare and Institutions Code, § 707)*, and would be revised to:

- Eliminate obsolete statutory references;
- Replace references to fitness with the new transfer terminology;
- Reframe the court’s findings and orders to reflect and reference the amended statutory text of section 707; and
- Provide space for the court to set an appearance date in criminal court and provide that dismissal of the juvenile petition occurs on that date.

The revised form would be available to courts to document their findings and orders consistent with the requirements of the amended provisions of section 707.

Correcting outdated statutory references and terminology

Optional forms *Juvenile Wardship Petition* (form JV-600), *Initial Appearance Hearing—Juvenile Delinquency* (form JV-642), and *Juvenile Notice of Violation of Probation* (form JV-735) all include statutory references that are obsolete because of Proposition 57 and need to be updated to reflect the current statutory numbering scheme. In addition, forms JV-600 and JV-642 both reference juvenile fitness hearings and need to be revised to reflect the new transfer terminology. Similarly, rule 5.664, which lists the topics that must be covered in training for court-appointed counsel for children in delinquency cases, uses the term “fitness” and needs to be updated. Finally, optional form *Promise to Appear—Juvenile Delinquency (Juvenile 14 Years or Older)* (JV-635), uses the term “police officer” to refer to the person authorized to release a minor 14 years or older charged with a felony, but the underlying statute, section 629, uses the term “peace officer.” Because peace officer is the statutory term with a legal definition, the committee is proposing to revise this form to reflect the statute.

Comments, Alternatives Considered, and Policy Implications

External comments

This proposal circulated for comment as part of the winter 2017 invitation-to-comment cycle, from December 16, 2016, to February 14, 2017, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, social workers, probation officers, and other juvenile law professionals. Fourteen organizations and individuals, and the Joint Rules Subcommittee of the Trial Court Presiding Judges and Court Executives Advisory Committees provided comment: five agreed with the proposal if modified, two disagreed, and eight did not indicate a position but provided comments. A chart with the full text of the comments received and the committee’s responses is attached at pages 29–96.

Optional writ petition form is unnecessary. The committee sought specific comment on the value of the council approving an optional writ petition form to be used to seek review of the court's decision on a transfer motion. While some commentators favored the petition, more felt it was unnecessary and potentially counterproductive as it would lead to the filing of insufficiently detailed and supported writ petitions for review. Based on this feedback, the committee eliminated this proposed form from the proposal and instead modified rule 5.770 to include a requirement that the court advise the parties of their rights and the procedures and deadlines for seeking review of the court's decision on a transfer of jurisdiction motion.

Premature to repeal reverse remand rule. The proposal circulated for comment proposed repealing a criminal court rule that implements Penal Code section 1170.17. This section allows for certain cases that were direct filed under the pre-Proposition 57 version of section 707 to be sent back to juvenile court if the child is convicted of an offense that is not eligible for transfer to criminal court jurisdiction. The repeal was proposed because, while Proposition 57 did not repeal Penal Code section 1170.17, it did eliminate the mechanism by which it could be invoked. The committee asked for specific comment on whether the repeal should be delayed to take into account cases that were filed before the enactment of Proposition 57. There was broad consensus that it was premature to repeal the rule, and the committee ultimately concluded that the rule should remain in place as long as Penal Code section 1170.17 remains in statute.

Clarifications needed in rule 5.766 concerning hearing timing requirements when transfer motion is denied. Several commentators noted that rule 5.766 needed to be clarified to provide deadlines for moving to the jurisdictional phase of the case after the court decides to retain jurisdiction in the juvenile court. The committee agreed and clarified the rule to require that the court apply the timelines in place for delinquency cases at the point that the motion is denied, unless the child waives those timelines.

Probation report provisions need updating to reflect recent changes in law. The rules revised in this proposal were all adopted prior to the passage of SB 382 in 2015, as well as Proposition 57. Several commentators noted that provisions in rule 5.768 do not sufficiently reflect the intent of these two measures with regard to the probation officer's report. Specifically, it was suggested that there is guidance in the rule on what may be included in the probation officer's report that is not in the statute, and that the rule does not include the guidance that was added by SB 382. The committee concurred that the statutory requirements should guide what is included in the probation officer's report and revised its proposed amendments to the rule to delete the nonstatutory guidance and direct the probation department to address all of the criteria that are in section 707(a)(2). In addition, the proposal now includes amendments to the rule to delete a prior requirement that the probation officer's report include a recommendation and instead provide that a recommendation is required only when the court orders it. Finally, the committee agreed with a number of commentators who suggested that the parties be provided with the probation officer's report at least two court days before the transfer hearing, as a 24-hour deadline did not allow sufficient time to prepare. In addition, the committee clarified that if this deadline is not

met, a continuance of at least 24 hours must be provided when the rule previously required just 24 hours.

Statutory provisions should guide court's evaluation of transfer motion. The commentators who were concerned that the probation report provisions of the rule did not reflect the current language and intent of section 707 had similar concerns about the provisions of the rule guiding the court in its evaluation of the transfer motion, and similarly suggested that the full statutory text be included in the rule. The committee, as has been its recent practice, declined to recommend that the statute be restated in the rule but did revise the proposal to clarify in the rule that the court should apply the criteria as they are defined in the statute. The committee also added a proposed Advisory Committee Comment to rule 5.770 that highlights the intent behind SB 382 and Proposition 57, and offers guidance to juvenile courts evaluating these motions. In addition, the committee is recommending revising optional form JV-710 to remove the list of criteria and check boxes to emphasize that the court is evaluating the motion based on the totality of the circumstances, and not looking at each criterion in isolation when assessing a transfer motion.

Best practice for the court is to state the basis for its decision on the record whether granting or denying the transfer motion. Two commentators representing district attorneys' offices objected that rule 5.770 only requires the court to set forth the basis for granting a transfer motion—and not for denial of a motion—thus placing the parties at a disadvantage when seeking writ review. The rule was drafted in that manner to reflect the text of section 707 as amended by Proposition 57, which expressly requires such a statement of the basis for the order only when it is being granted. The committee concluded that it was best for the rule to reflect this statutory requirement and thus decided not to change this aspect of the proposal as it was circulated for comment. The committee did try and address the issue raised by the commentators by adding a proposed Advisory Committee Comment stressing that it should be the best practice of all juvenile courts to state the basis for their ruling on the motion in all cases, and not only when the motion is granted.

Juvenile court should set appearance date in criminal court and dismiss jurisdiction on that date to prevent jurisdictional uncertainty. Some commentators suggested that when the juvenile court grants a transfer motion, it should not immediately dismiss the juvenile petition, since until a criminal complaint has been filed there is no other court with clear jurisdiction over the child. It was suggested that the juvenile court should set an appearance date in criminal court and order the child to appear and order the petition dismissed only upon that date. In addition, it was suggested that the juvenile court order the prosecuting attorney to file a criminal complaint on or before that date. The committee agreed that the juvenile court should set an appearance date and delay the dismissal of the juvenile court petition until that date and revised the proposal accordingly. The committee felt there was not authority for the juvenile court to order the prosecuting agency to file a complaint and thus did not revise the proposal to address this.

Right to a prima facie hearing on the allegations. The proposal circulated for public comment included deleting rule 5.772 in its entirety as this rule specifically addresses cases in which statutory presumptions repealed by Proposition 57 were applied. However, several commentators noted that rule 5.772(b) requires the court, on a motion by the child, to determine whether there is a prima facie showing that the offense alleged was a felony or specified in section 707(b). They noted that this requirement should remain in place in order to protect the due process rights of the child to only be subject to a transfer motion if the prosecution makes a prima facie showing that the child has committed an eligible offense. The committee agreed with these commentators. Rather than retaining rule 5.772, however, the committee revised the proposal to add this provision from rule 5.772 to rule 5.770.

Need for consistent terminology. The Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges and the Court Executives Advisory Committees submitted a comment asking for a consistent use of terms in the rules and forms. Currently the criminal court rules use the term minor (as does section 707), while the juvenile court rules use the term child, and form JV-710 uses the term youth. The JRS recommended that the committee look at this issue globally and use one term and suggested that in this context the committee follow the statute and use the term minor.

The committee notes that throughout the juvenile court rules and forms, there is a consistent practice of using the term child and that this term is clearly defined in rule 5.502. The committee considered whether it would be preferable to achieve consistent terminology across the juvenile and criminal rules and forms relating to the transfer of jurisdiction by using the term minor rather than using child. In their discussion of whether it was preferable to use the term child, youth, or minor, the committee weighed the benefits of using the statutory term “minor” against the concerns raised that doing so would be inconsistent with typical council practice in juvenile rules and forms, which largely use the term child. The committee agreed that youth was not sufficiently specific, but noted that the terms child and minor are defined in statute² and the term child is also defined in rule 5.502. Ultimately the committee chose to use the term child as (1) it is defined clearly in statute and the rule of court; and (2) it is a reminder to all in the system that juvenile offenders are developmentally distinct from adults, and transfer motions need to be analyzed in that context as directed by section 707. Consistent with this decision, the committee also recommends revising the terminology on the transfer of jurisdiction order form to use the term child rather than youth.

Internal comments

The proposal that was circulated for public comment indicated that the effective date of the proposed changes to the rules and forms would be September 1, 2017. Committee members, many of whom are in the process of trying to implement the new provisions of Proposition 57, discussed whether it would be preferable to make these amended rules and revised forms

² See section 101(b): “Child or minor means a person under the jurisdiction of the juvenile court pursuant to section 300, 601, or 602.”

effective earlier than September 1. Because the new law has been in effect since the November 2016 election and courts are struggling with implementation, the committee discussed whether the rules should go into July 1, 2017, or whether they should become effective the first court day after the May 19 council meeting, Monday, May 22. Because all but one of the forms in the proposal are all optional, the committee concluded that courts that needed more time to implement use of these forms could take that time even if the proposal became effective immediately. Moreover, the rule changes simply implement the statutory changes and thus should not require any additional time to implement, but may be of value in providing guidance to the courts who are applying the new law. For these reasons, the committee concluded that making the proposal effective on the first court day after the meeting —May 22—was the preferred option.

Alternatives

Leaving the rules and forms unchanged. The committee considered not taking action to revise and amend the existing rules and forms that govern the process for transferring jurisdiction from the juvenile to the criminal courts, but determined that courts who are trying to implement the new provisions of Proposition 57 need accurate rules and forms that reflect the recent changes in the law.

Incorporating statutory requirements and guidance into rules of court. As described above, when reviewing the comments, the committee considered some other approaches to the rules and forms. Most prominently, the committee considered whether to amend the rules to reflect best practice suggestions that were not required by the statute such as (1) requiring the court to state the reasons for its decision regardless of whether it grants or denies transfer, and (2) requiring probation to make a recommendation on transfer although the statute does not require this. While the committee had consensus that these best practices would improve the process, it concluded that it was preferable for the rule to adhere closely to the express text of the statute and thus left whether to follow these best practices to the discretion of the court. The committee also considered the necessity of restating significant portions of section 707 in the rules to provide guidance to the probation agencies and the court on how to evaluate transfer motions. While the committee agreed with commentators about the significance of the statutory text, it ultimately disagreed that the rules must include that text in order to accomplish the statutory objectives. The committee's view is that it is sufficient to include statutory references and an Advisory Committee Comment to highlight the need to follow the statutory directives and guidance.

Expediting the effective date of the proposal. As discussed above, the committee considered recommending that this proposal become effective September 1, 2017, with the other Winter Cycle proposals, and similarly discussed making it effective July 1, 2017. Both of these options would have left courts with more time to prepare for implementation, but left them without rules and forms to implement Proposition 57.

Implementation Requirements, Costs, and Operational Impacts

The committee does not anticipate that the rule and form changes it is recommending will have appreciable implementation requirements, costs or impacts, but notes that the statutory changes made by Proposition 57 are likely to have significant impact on the courts. As a result of these statutory changes, it is likely that juvenile courts will receive more requests for hearings from the district attorney seeking to transfer jurisdiction of a child to criminal court under section 707 as direct file is no longer an option, resulting in more of these hearings in the juvenile court. This workload will be most pronounced in those jurisdictions that used the direct file mechanism regularly. Thus, the increase may not be spread evenly across the courts and may be quite substantial in some jurisdictions. Proposition 57 also changed the nature of the court's assessment in these cases, and several commentators suggested that as a result, these proceedings will take longer and require substantially more juvenile court time to look at all of the criteria holistically and make a determination without evidentiary presumptions and bright line rules, and will require that training on these procedures be revised and updated. These changes may need to be incorporated into future juvenile court workload models developed by the council since existing models are premised on the prior process for evaluating a request to transfer jurisdiction to the criminal court.

If the implementation of Proposition 57 results in the juvenile courts retaining jurisdiction over children that would have otherwise been tried in criminal court, the result will be to reduce the number of juvenile cases transferred to criminal court jurisdiction, and thus there may be some workload savings in those courts. Moreover, there is some evidence that involvement in the adult criminal justice system can lead to more negative lifetime outcomes, and thus there may be savings to the state and the public if fewer children are transferred to criminal court jurisdiction.

As noted above, all of these impacts are as a result of the changes in the underlying statutes and are thus unavoidable. The committee has made every effort in recommending changes to the rules and forms to implement the statutes to make the process as clear as possible and to provide courts with the tools needed to comply with the changes in the law.

Attachments and Links

1. Cal. Rules of Court, rules 4.116, 5.664, 5.766, 5.768, 5.770, and 5.772, at pages 11–19
2. Judicial Council forms JV-600, JV-635, JV-642, JV-710, and JV-735, at pages 20–28
3. Chart of comments, at pages 29–96
4. Link A: Proposition 57 text
[https://www.gov.ca.gov/docs/The_Public_Safety_and_Rehabilitation_Act_of_2016_\(00266261xAEB03\).pdf](https://www.gov.ca.gov/docs/The_Public_Safety_and_Rehabilitation_Act_of_2016_(00266261xAEB03).pdf)

Rule 5.772 of the California Rules of Court is repealed, and rules 4.116, 5.664, 5.766, 5.768, and 5.770 are amended, effective May 22, 2017, to read:

Rule 4.116. Certification to juvenile court

(a) Application

This rule applies to all cases not filed in juvenile court in which the person charged by an accusatory pleading appears to be under the age of 18, except ~~(1) when the child has been found not a fit and proper subject to be dealt with under the juvenile court law or (2) when the prosecution was initiated as a criminal case under Welfare and Institutions Code section 602(b) or 707(d) when jurisdiction over the child has been transferred from the juvenile court under Welfare and Institutions Code section 707.~~

(b)–(d) * * *

Rule 5.664. Training requirements for children’s counsel in delinquency proceedings (§ 634.3)

(a) * * *

(b) Education and training requirements

(1) * * *

(2) Attorney training must include:

(A)–(P) * * *

(Q) Fitness Transfer of jurisdiction to criminal court hearings and advocacy in adult court;

(R)–(S) * * *

(c)–(d) * * *

Rule 5.766. General provisions

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

A child who is the subject of a petition under section 602~~(a)~~ 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 ~~prosecuting attorney~~ district attorney or other appropriate prosecuting officer may ~~request a hearing to determine whether the child is a fit and proper subject to be dealt with under the juvenile court law~~ make a motion to transfer the child from juvenile court to a court of criminal jurisdiction, in one of the following circumstances:

~~(3)(1) Under section 707(c), the~~ The child was 14 years or older at the time of the alleged offense listed in section 707(b).

~~(1)(2) Under section 707(a)(1), the~~ The child was 16 years or older at the time of the alleged felony offense if ~~the offense is not listed in section 707(b).~~

~~(2) Under section 707(a)(2), the child was 16 years or older at the time of the alleged felony offense not listed in section 707(b) and has been declared a ward of the court under section 602 on at least one prior occasion and:~~

~~(A) The child has previously been found to have committed two or more felony offenses; and~~

~~(B) The felony offenses in the previously sustained petitions were committed when the child was 14 years or older.~~

(b) Notice (§ 707)

Notice of the fitness transfer hearing must be given at least five judicial days before the fitness hearing. In no case may notice be given following the attachment of jeopardy.

(c) Prima facie showing

On the child'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 subject to transfer as set forth in subdivision (a).

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

The fitness transfer of jurisdiction hearing must be held and the court must rule on the issue of fitness the request to transfer jurisdiction before the jurisdiction hearing begins. Absent a continuance under rule 5.776 or the child'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 ~~investigate the issue of fitness~~ prepare and submit to the court a report on the behavioral patterns and social history of the child being considered. The report must include information relevant to the determination of whether ~~or not the child would be amenable to the care, treatment, and training program available through the facilities of the juvenile court, including information~~

1 ~~regarding all of the criteria listed in rules 5.770 and 5.772 should be retained under~~
2 ~~the jurisdiction of the juvenile court or transferred to the jurisdiction of the criminal~~
3 ~~court, including information regarding all of the criteria in section 707(a)(2). The~~
4 ~~report must also include any written or oral statement offered by the victim~~
5 ~~pursuant to section 656.2. The report may also include information concerning:~~
6

7 ~~(1) The social, family, and legal history of the child;~~
8

9 ~~(2) Any statement the child chooses to make regarding the alleged offense;~~

10 ~~(3) Any statement by a parent or guardian;~~
11

12 ~~(4) If the child is or has been under the jurisdiction of the court, a statement by~~
13 ~~the social worker, probation officer, or Youth Authority parole agent who has~~
14 ~~supervised the child regarding the relative success or failure of any program~~
15 ~~of rehabilitation; and~~
16

17 ~~(5) Any other information relevant to the determination of fitness.~~
18

19 **(b) Recommendation of probation officer (§§ 281, 707)**
20

21 If the court, under section 281, orders the probation officer to include a
22 recommendation, the probation officer must make a recommendation to the court
23 as to whether the child is a fit and proper subject to be dealt with under the juvenile
24 court law should be retained under the jurisdiction of the juvenile court or
25 transferred to the jurisdiction of the criminal court.
26

27 **(c) Copies furnished**
28

29 The probation officer's report on the behavioral patterns and social history of the
30 child must be furnished to the child, the parent or guardian, and all counsel at least
31 24 hours two court days before commencement of the fitness hearing on the
32 motion. A continuance of at least 24 hours must be granted on the request of any
33 party who has not been furnished the probation officer's report in accordance with
34 this rule.
35

36 **Rule 5.770. Conduct of fitness transfer of jurisdiction hearing under section**
37 **707(a)(1)**
38

39 **(a) Burden of proof (§ 707(a)(1))**
40

41 In a fitness transfer of jurisdiction hearing under section 707(a)(1), the burden of
42 proving that the child is unfit there should be a transfer of jurisdiction to criminal
43 court jurisdiction is on the petitioner, by a preponderance of the evidence.
44

45 **(b) Criteria to consider (§ 707(a)(1))**
46

Following receipt of the probation officer's report and any other relevant evidence, the court may ~~find that order that~~ the child is not a fit and proper subject to be dealt with under juvenile court law be transferred to the jurisdiction of the criminal court if the court finds:

- (1) The child was 16 years or older at the time of ~~the~~ any alleged felony offense, ~~and or the child was 14 or 15 years at the time of an alleged felony offense~~ listed in section 707(b); and
- (2) The child ~~would not be amenable to the care, treatment, and training program available through facilities of the juvenile court,~~ should be transferred to the jurisdiction of the criminal court based on an evaluation of all of the following criteria in section 707(a)(2) as provided in that section:
 - ~~(A) The degree of criminal sophistication exhibited by the child;~~
 - ~~(B) Whether the child can be rehabilitated before the expiration of jurisdiction;~~
 - ~~(C) The child's previous delinquent history;~~
 - ~~(D) The results of previous attempts by the court to rehabilitate the child;~~
~~and~~
 - ~~(E) The circumstances and gravity of the alleged offense.~~

(c) ~~Findings under section 707(a)(1)(2)~~ **Basis for order of transfer**

The findings must be stated in the order.

(1) ~~Finding of fitness~~

The court may find the child to be fit and state that finding.

(2) ~~Finding of unfitness~~

If the court determines the child is unfit, the court must find that:

- ~~(A) The child was 16 years or older at the time of the alleged offense; and~~
- ~~(B) The child would not be amenable to the care, treatment, and training program available through the juvenile court because of one or a combination of more than one of the criteria listed in (b)(2).~~

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 upon the minutes.

1 **~~(d)~~— Maintenance of juvenile court jurisdiction**

2
3 If the court determines that one or more of the criteria listed in (b)(2) apply to the
4 child, the court may nevertheless find that the child is amenable to the care,
5 treatment, and training program available through the juvenile court and may find
6 the child to be a fit and proper subject to be dealt with under juvenile court law.
7

8 **~~(e)~~Extenuating circumstances**

9
10 The court may consider extenuating or mitigating circumstances in the evaluation
11 of each relevant criterion.
12

13 **~~(f)~~(d) Procedure following findings**

- 14
15 (1) If the court finds the child ~~to be fit~~ should be retained within the jurisdiction
16 of the juvenile court, the court must proceed to jurisdiction hearing under rule
17 5.774.
18
19 (2) If the court finds the child ~~to be unfit~~ should be transferred to the jurisdiction
20 of the criminal court, the court must make orders under section 707.1 relating
21 to bail and to the appropriate facility for the custody of the child, or release
22 on own recognizance pending prosecution. The court must set a date for the
23 child to appear in criminal court, and dismiss the petition without prejudice
24 upon the date of that appearance.
25
26 (3) When the court rules on the request to transfer the child to the jurisdiction of
27 the criminal court, the court must advise all parties present that appellate
28 review of the order must be by petition for extraordinary writ. The
29 advisement may be given orally or in writing when the court makes the
30 ruling. The advisement must include the time for filing the petition for
31 extraordinary writ as set forth in subdivision (g) of this rule.
32

33 **~~(g)~~(e) Continuance to seek review**

34
35 If the prosecuting attorney informs the court orally or in writing that a review ~~of a~~
36 finding of fitness of the court's decision not to transfer jurisdiction to the criminal
37 court will be sought and requests a continuance of the jurisdiction hearing, the
38 court must grant a continuance for not less than two judicial days to allow time
39 within which to obtain a stay of further proceedings from the reviewing judge or
40 appellate court.
41

42 **~~(h)~~(f) Subsequent role of judicial officer**

43
44 Unless the child objects, the judicial officer who has conducted a ~~fitness~~ hearing on
45 a motion to transfer jurisdiction may participate in any subsequent contested
46 jurisdiction hearing relating to the same offense.

1 **(i)(g) Review of fitness determination on a motion to transfer jurisdiction to**
2 **criminal court**

3
4 An order ~~that a child is or is not a fit and proper subject to be dealt with under the~~
5 ~~juvenile court law granting or denying a motion to transfer jurisdiction of a child to~~
6 ~~the criminal court~~ is not an appealable order. Appellate review of the order is by
7 petition for extraordinary writ. Any petition for review of a judge's order
8 ~~determining the child unfit to transfer jurisdiction of the child to the criminal court,~~
9 or denying an application for rehearing of the referee's determination ~~of unfitness~~
10 ~~to transfer jurisdiction of the child to the criminal court,~~ must be filed no later than
11 20 days after the child's first arraignment on an accusatory pleading based on the
12 allegations that led to the ~~unfitness determination~~ transfer of jurisdiction order.
13

14 **(h) Postponement of plea prior to transfer hearing**

15 If a hearing for transfer of jurisdiction has been noticed under section 707, the court
16 must postpone the taking of a plea to the petition until the conclusion of the transfer
17 hearing, and no pleas that may have been entered already may be considered as
18 evidence at the hearing.
19

20 **Advisory Committee Comment**

21 **Subdivision (b).** This subdivision reflects changes to section 707 made by Senate Bill 382 (Sen.
22 Bill 382 [Lara]; Stats. 2015, ch. 234) in 2015, and Proposition 57: the Public Safety and
23 Rehabilitation Act of 2016. SB 382 was intended to clarify the factors for the juvenile court to
24 consider when determining whether a case should be transferred to criminal court by emphasizing
25 the unique developmental characteristics of children and their prior interactions with the juvenile
26 justice system. Proposition 57 provided that its intent was to promote rehabilitation for juveniles
27 and prevent them from reoffending, and to ensure that a judge makes the determination that a
28 child should be tried in a criminal court. Consistent with this intent, the committee urges juvenile
29 courts—when evaluating the statutory criteria to determine if transfer is appropriate—to look at
30 the totality of the circumstances, taking into account the specific statutory language guiding the
31 court in its consideration of the criteria.
32

33 **Subdivision (c).** While this rule and section 707 only require the juvenile court to recite the basis
34 for its decision when the transfer motion is granted, the advisory committee believes that juvenile
35 courts should, as a best practice, state the basis for their decisions on these motions in all cases so
36 that the parties have an adequate record from which to seek subsequent review.
37

38 **Rule 5.772. Conduct of fitness hearings under sections 707(a)(2) and 707(e)**

39
40 **(a) — Presumption (§§ 707(a)(2), 707(e))**

41
42 ~~In a fitness hearing under section 707(a)(2) or 707(e), the child is presumed to be~~
43 ~~unfit, and the burden of rebutting the presumption is on the child, by a~~
44 ~~preponderance of the evidence.~~
45

46 **(b) — Prima facie showing**

1 On the child's motion, the court must determine whether a prima facie showing has
2 been made that the offense alleged is a felony or is specified in section 707(b).
3

4 ~~(e) — Criteria to consider (§ 707(a)(2))~~

5
6 Following receipt of the probation officer's report and any other relevant evidence,
7 the court must find that the child is not a fit and proper subject to be dealt with
8 under the juvenile court law, unless the court finds:
9

10 (1) — The child was under 16 years of age at the time of the alleged felony offense;
11

12 (2) — The child had not been declared a ward at the time of the alleged offense or
13 any time previously;
14

15 (3) — The child has not previously been found to have committed two or more
16 felony offenses;
17

18 (4) — The prior felony offenses were committed before the child had reached the
19 age of 14 years; or
20

21 (5) — The child would be amenable to the care, treatment, and training program
22 available through the juvenile court, based on evaluation of each of the
23 following criteria:
24

25 (A) — The degree of criminal sophistication exhibited by the child;
26

27 (B) — Whether the child can be rehabilitated before the expiration of
28 jurisdiction;
29

30 (C) — The child's previous delinquent history;
31

32 (D) — The results of previous attempts by the court to rehabilitate the child;
33 and
34

35 (E) — The circumstances and gravity of the alleged offense.
36

37 ~~(d) — Findings under section 707(c)~~

38
39 Following receipt of the probation officer's report and any other relevant evidence,
40 the court must find that the child is not a fit and proper subject to be dealt with
41 under the juvenile court law, unless the court finds:
42

43 (1) — The child was under 14 years of age at the time of the offense specified in
44 section 707(b);
45

46 (2) — The offense alleged is not listed in section 707(b); or

1 ~~(3) The child would be amenable to the care, treatment, and training program~~
2 ~~available through the juvenile court, based on evaluation of each of the~~
3 ~~criteria described in (c)(5).~~

4
5 ~~(e) Extenuating circumstances~~

6
7 ~~The court may consider extenuating or mitigating circumstances in the evaluation~~
8 ~~of each relevant criterion.~~

9
10 ~~(f) Findings (§§ 707(a)(2), 707(c))~~

11
12 ~~The findings must be stated in the order.~~

13
14 ~~(1) Finding of unfitness (§ 707(a)(2))~~

15
16 ~~If the child has failed to rebut the presumption of unfitness, the court must~~
17 ~~find that:~~

18
19 ~~(A) The child has previously been found to have committed two or more~~
20 ~~offenses listed in section 707(b) and was 14 years of age or older at the~~
21 ~~time of the felony offenses; and~~

22
23 ~~(B) The child would not be amenable to the care, treatment, and training~~
24 ~~program available through the juvenile court because of one or a~~
25 ~~combination of more than one of the criteria in (c)(5).~~

26
27 ~~(2) Finding of unfitness (§ 707(c))~~

28
29 ~~If the child has failed to rebut the presumption of unfitness, the court must~~
30 ~~find that:~~

31
32 ~~(A) The child was 14 years or older at the time of the alleged offense and~~
33 ~~the offense is listed in section 707(b); and~~

34
35 ~~(B) The child would not be amenable to the care, treatment, and training~~
36 ~~program available through the juvenile court because of one or a~~
37 ~~combination of more than one of the criteria in (c)(5).~~

38 ~~(3) Finding of fitness (§§ 707(a)(2), 707(c))~~

39
40 ~~In order to find the child fit, the court must find that the child would be~~
41 ~~amenable to the care, treatment, and training program through the juvenile~~
42 ~~court on each and every criterion in (c)(5), and the court must state that~~
43 ~~finding of amenability under each and every criterion.~~

44
45 ~~(g) Procedure following findings~~

1 (1) ~~If the court finds the child to be unfit, the court must make orders under~~
2 ~~section 707.1 relating to bail, and to the appropriate facility for the custody of~~
3 ~~the child, or release on own recognizance pending prosecution. The court~~
4 ~~must dismiss the petition without prejudice.~~

5
6 (2) ~~If the court finds the child to be fit, the court must proceed to jurisdiction~~
7 ~~hearing under rule 5.774.~~

8
9 **~~(h) Continuance to seek review~~**

10
11 ~~If the prosecuting attorney informs the court orally or in writing that a review of a~~
12 ~~finding of fitness will be sought and requests a continuance of the jurisdiction~~
13 ~~hearing, the court must grant a continuance for not less than 2 judicial days to allow~~
14 ~~time within which to obtain a stay of further proceedings from the reviewing judge~~
15 ~~or appellate court.~~

16
17 **~~(i) Subsequent role of judicial officer~~**

18
19 ~~Unless the child objects, the judicial officer who has conducted a fitness hearing~~
20 ~~may participate in any subsequent contested jurisdiction hearing relating to the~~
21 ~~same offense.~~

22
23 **~~(j) Review of fitness determination~~**

24
25 ~~An order that a child is or is not a fit and proper subject to be dealt with under the~~
26 ~~juvenile court law is not an appealable order. Appellate review of the order is by~~
27 ~~extraordinary writ. Any petition for review of a judge's order determining the child~~
28 ~~to be unfit or denying an application for rehearing of the referee's determination of~~
29 ~~unfitness must be filed no later than 20 days after the child's first arraignment on an~~
30 ~~accusatory pleading based on the allegations that led to the unfitness determination.~~
31

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO: _____ NAME: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL 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: _____	
JUVENILE WARDSHIP PETITION <input type="checkbox"/> § 601(a) <input type="checkbox"/> § 601(b) <input type="checkbox"/> § 602	CASE NUMBER: _____

1. Petitioner on information and belief alleges the following:

- a. ☐ The child named below comes within the jurisdiction of the juvenile court under the following sections of the Welfare and Institutions Code (*check applicable boxes; see attachments for concise statements of facts*):
☐ 601(a) ☐ 601(b) ☐ 602 Violation (*specify code section*): _____

- b. ☐ Under a previous order of this court, dated _____, the child was declared a ward under Welfare and Institutions Code section ☐ 601(a) ☐ 601(b) ☐ 602

c. Child's name and address: _____	d. Age: _____	e. Date of birth: _____	f. Sex: _____
------------------------------------	---------------	-------------------------	---------------

g. Name: _____ Address: _____ <div style="display: flex; justify-content: flex-end; margin-top: 5px;"> <input type="checkbox"/> mother <input type="checkbox"/> father <input type="checkbox"/> guardian <input type="checkbox"/> unknown </div> <p style="margin-top: 10px;">If mother or father (<i>check all that apply</i>): <input type="checkbox"/> legal <input type="checkbox"/> biological <input type="checkbox"/> presumed <input type="checkbox"/> alleged </p>	h. Name: _____ Address: _____ <div style="display: flex; justify-content: flex-end; margin-top: 5px;"> <input type="checkbox"/> mother <input type="checkbox"/> father <input type="checkbox"/> guardian <input type="checkbox"/> unknown </div> <p style="margin-top: 10px;">If mother or father (<i>check all that apply</i>): <input type="checkbox"/> legal <input type="checkbox"/> biological <input type="checkbox"/> presumed <input type="checkbox"/> alleged </p>
--	--

i. Name: _____ Address: _____ <div style="display: flex; justify-content: flex-end; margin-top: 5px;"> <input type="checkbox"/> mother <input type="checkbox"/> father <input type="checkbox"/> guardian <input type="checkbox"/> unknown </div> <p style="margin-top: 10px;">If mother or father (<i>check all that apply</i>): <input type="checkbox"/> legal <input type="checkbox"/> biological <input type="checkbox"/> presumed <input type="checkbox"/> alleged </p>	j. Other (<i>name, address, and relationship to child</i>): <input type="checkbox"/> No known parent or guardian resides within this state. This adult relative lives in this county or is closest to this court.
--	--

k. Attorney for child (<i>if known</i>): Address: _____ Phone number: _____	l. Child is <input type="checkbox"/> not detained. <input type="checkbox"/> detained. Date and time of detention (<i>custody</i>): _____ Current place of detention (<i>address</i>): _____
---	--

(See important notices on page 2.)

Page 1 of 2

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

2. Petitioner requests that the court find these allegations to be true.
3. ☐ Petitioner requests a hearing to determine whether the child should be transferred to the jurisdiction of the criminal court under Welfare and Institutions Code section 707 for the following alleged offense(s) (*specify code section*):

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF PETITIONER)

☐ *Indian Child Inquiry Attachment* (form ICWA-010(A)) is completed and attached.

☐ Number of pages attached: _____

**TO PARENTS OR OTHERS LEGALLY RESPONSIBLE FOR THE
SUPPORT OF THE CHILD**

You and the estate of your child may be jointly and severally liable for the cost of the care, support, and maintenance of your child in any placement or detention facility, the cost of legal services for your child or you by a public defender or other attorney, the cost of supervision of your child by order of the juvenile court, and the cost of any restitution owed to the victim.

RECORD SEALING

The court may seal your records at the conclusion of your case or you may request sealing at a later date. Please see form JV-595-INFO, *How to Ask the Court to Seal Your Records*, and form JV-596-INFO, *Sealing of Records for Satisfactory Completion of Probation*, available through your attorney or www.courts.ca.gov/forms.htm, for more information about record sealing.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council
CASE NAME:	
PROMISE TO APPEAR—JUVENILE DELINQUENCY (Juvenile 14 Years or Older)	
LAW ENFORCEMENT AGENCY: REPORT NUMBER:	

Name of child:

Date of birth of child:

Address of child:

Phone number of child:

Name of parent, legal guardian, or adult relative:

Address of parent, legal guardian, or adult relative *(if different from that of child)*:Phone number of parent, legal guardian, or adult relative *(if different from that of child)*:1. I have been arrested for one or more of the following felony offenses *(list code violations alleged)*:

2. The ☐ peace officer ☐ probation officer is releasing me to *(name)*:
 who is my ☐ mother ☐ father ☐ legal guardian ☐ relative *(state relationship)*:

3. **I PROMISE TO APPEAR**

on <i>(date)</i> :	at <i>(time)</i> :	in Dept.:	Room:
--------------------	--------------------	-----------	-------

 located at ☐ courthouse address above ☐ other *(specify address)*:

4. I understand that if I do not come to court on the date and at the time indicated, the court may order that a warrant be issued for my arrest.

Date:

(TYPE OR PRINT NAME)_____
(TYPE OR PRINT NAME)**Witnessed by:**_____
(TYPE OR PRINT NAME)

(SIGNATURE OF CHILD)

(SIGNATURE OF ☐ PARENT ☐ LEGAL GUARDIAN ☐ RELATIVE)SIGNATURE OF ☐ PROBATION OFFICER
☐ PEACE OFFICER *(agency)*:**Request for Accommodations**

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you are ask at least five days before the proceeding. Contact the clerk's office or go to www.courts.ca.gov/forms for *Request for Accommodations by Persons With Disabilities and Order* (form MC-410. (Civil Code, § 54.8.)

CHILD'S NAME:

CASE NUMBER:

INITIAL APPEARANCE HEARING—JUVENILE DELINQUENCY☐ Out-of-Custody Appearance ☐ In-Custody Appearance and Detention**THE COURT MAKES THE FOLLOWING FINDINGS AND ORDERS:**

1. ☐ Notice has been given as required by law.
2. ☐ The child's date of birth is *(specify)*:
3. ☐ The child is to remain out of custody pending the next hearing.
4. ☐ The child was taken into custody at: ☐ a.m. ☐ p.m. on *(specify date)*:
5. ☐ The petition or notice of probation violation was filed at: ☐ a.m. ☐ p.m. on *(specify date)*:
6. ☐ Counsel is appointed for the child as follows:
Counsel is to represent the child until relieved by the court in accordance with California Rules of Court, rule 5.663.
7. ☐ The information on the face of the petition was ☐ confirmed ☐ corrected as follows:
8. a. ☐ The court inquired of ☐ the mother ☐ others *(names and relationships)*:

as to the identities and addresses of all presumed or alleged fathers.
- b. ☐ The court finds *(name)*: ☐ presumed ☐ alleged father. to be the ☐ legal ☐ biological
9. The ☐ mother ☐ father ☐ legal guardian ☐ other *(specify)*:
were provided with a *Parental Notification of Indian Status* (form ICWA-020) and ordered to complete the form and submit it to the court before leaving the courthouse today.
10. a. ☐ The child ☐ is ☐ may be an Indian child, and the county agency must provide, as required by law, notice of the proceeding and of the tribe's right to intervene. Proof of such notice must be filed with the court.
- b. ☐ There is reason to believe that the child may be of Indian ancestry, and the county agency must provide notice of the proceedings to the Bureau of Indian Affairs as required by law. Proof of such notice must be filed with this court.
11. ☐ The court advised the child and parent or legal guardian of *(check all that apply)*
 - a. ☐ the contents of the petition.
 - b. ☐ the nature and possible consequences of juvenile court proceedings.
 - c. ☐ the purpose and scope of the initial hearing.
 - d. ☐ the hearing rights described in rule:
 - e. ☐ the reason the child was taken into custody.
 - f. ☐ the parent or legal guardian's financial obligation and right to be represented by counsel.
 - g. ☐ other:
12. ☐ Reading of the petition and advice of rights were waived by ☐ the child ☐ the child's counsel.
13. ☐ The prosecutor has requested that a hearing be set to determine whether the child **should be transferred to the jurisdiction of the criminal court under Welfare and Institutions Code section 707.**
14. ☐ The child ☐ through counsel
 - a. ☐ denied the allegations of the petition dated:
 - b. ☐ asked the court to take no action on the petition at this time.
15. ☐ For the reasons stated on the record, the petition is dismissed ☐ in the interests of justice ☐ because the child does not need treatment or rehabilitation.
16. ☐ After inquiry, the court finds that the child understands the nature of the allegations and the direct consequences of admitting or pleading no contest to the allegations of the petition, and understands and waives the hearing rights, which were explained *(check all that apply)*:
 - a. ☐ The right to have a hearing.

CHILD'S NAME:

CASE NUMBER:

16. ☐ The right to cross-examine and confront witnesses.
☐ The right to subpoena witnesses and present a defense.
☐ The right to remain silent.
17. ☐ The child ☐ through counsel
a. ☐ admitted the petition ☐ as filed ☐ as amended on (date):
b. ☐ pleaded no contest to the petition ☐ as filed ☐ as amended on (date):
c. ☐ The child's counsel consents to the admission or plea of no contest.
d. ☐ The admission or plea of no contest is freely and voluntarily made.
e. ☐ There is a factual basis for the admission or plea of no contest.
f. ☐ The court finds that the child was under 14 years old at the time of the offense but the child knew the wrongfulness of his or her conduct at the time the offense was committed.

18. a. ☐ The following allegations are admitted and found to be true:

Count number	Statutory violation	Misdemeanor	Felony	To be specified at disposition	Enhancement (if applicable)
<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

- b. ☐ As to any offense that could be considered a misdemeanor or felony, the court is aware of and exercises its discretion to determine the offense, as stated in 18a.
- c. ☐ The following allegations are dismissed:
Count number Statutory violation

19. ☐ The child is described by section ☐ 601 ☐ 602 of the Welfare and Institutions Code.
20. ☐ The maximum confinement time is:
21. ☐ The child's residence is in: _____ County.
22. ☐ The matter is transferred to: _____ County for disposition and further proceedings.
Juvenile Court Transfer Orders (form JV-550) will be completed and transmitted immediately.
23. ☐ The child waives his or her right under *People v. Arbuckle* to have the disposition heard by this judicial officer.

CHILD IN CUSTODY

24. ☐ The court has considered the detention report prepared by probation
☐ and the following documents (*specify*):
☐ and the testimony of (*name*):
☐ and the examination by the court of (*name*):
☐ and takes judicial notice of the entire court file.
25. ☐ The child is released from custody ☐ to the home of (*name, address, and relationship to child*):
☐ on home supervision ☐ on electronic monitoring
☐ the terms of which are stated in the attached *Terms and Conditions* (form JV-624).
26. ☐ The child is a dependent of the court under section 300 and is ordered released from custody. The child welfare services department must either ensure that the child's current caregiver take physical custody of the child or take physical custody of the child and place the child in a licensed or approved placement.

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

27. ☐ A prima facie showing has been made that the child's disposition is by section 601 or 602.
28. ☐ Based on the facts stated on the record, the child is detained in secure custody on the following grounds (*check all that apply*):
- a. ☐ The child has violated an order of the court.
 - b. ☐ The child has escaped from a court commitment.
 - c. ☐ The child is likely to flee the jurisdiction of the court.
 - d. ☐ It is a matter of immediate and urgent necessity for the protection of the child.
 - e. ☐ It is reasonably necessary for the protection of the person or property of another.
29. ☐ Based on the facts stated on the record, continuance in the child's home is contrary to the child's welfare.
30. ☐ Based on the facts stated on the record, there are no available services that would prevent the need for further detention.
31. ☐ Temporary placement and care is the responsibility of the probation department.
32. ☐ Reasonable efforts to prevent or eliminate the need for detention of the child ☐ have ☐ have not been made.
33. ☐ Probation is ordered to provide services that will assist with reunification of the child and the family.
34. ☐ Probation is granted the authority to authorize medical, surgical, or dental care under Welfare and Institutions Code section 739.
35. ☐ The child and the parent or legal guardian have been advised that if the child cannot be returned home within the statutory timelines, a proceeding may be scheduled to determine an alternative permanent home, including an adoptive home after parental rights are terminated.
36. ☐ The ☐ mother ☐ father ☐ legal guardian **is/**are ordered to supply the names and contact information of adult relatives to probation so **they** can **be notified** of the child's removal and of their options to be included in the child's life.
37. ☐ The probation officer must file a case plan within 60 days.
38. ☐ Probation is authorized to release the minor ☐ at its discretion ☐ under the following circumstances:
39. ☐ The court accepts transfer from the County of:
40. ☐ Other orders:
41. ☐ Child ☐ Counsel waives time for (*check all that apply*)
☐ jurisdiction hearing ☐ disposition hearing ☐ other:
42. ☐ **The next hearings will be**
- | | | | |
|-------|-------|-------|------------------|
| Date: | Time: | Dept: | Type of hearing: |
| Date: | Time: | Dept: | Type of hearing: |
43. ☐ The child
- a. ☐ is ordered to return to court on the above date**(s)** and time**(s)**.
 - b. ☐ remains detained.
44. All prior orders not in conflict, including any terms and conditions of probation, remain in full force and effect.
45. ☐ All appointed counsel are relieved.

Date:

☐ JUDGE ☐ JUDGE PRO TEMPORE ☐ COMMISSIONER ☐ REFEREE
Countersignature for detention orders (*if necessary*):

Date:

JUDICIAL OFFICER

1. a. Date of hearing: _____ Dept.: _____ Room: _____
b. Judicial officer (name): _____
c. Persons present: ☐ Child ☐ Child's attorney (name): _____
☐ Deputy District Attorney (name): _____
☐ Other: _____
2. ☐ The court has read and considered: ☐ The petition and report of the probation officer.
☐ Other relevant evidence.
3. **THE COURT FINDS (check one):**
Welfare and Institutions Code section 707
a. ☐ The child was 16 years old or older at the time of the alleged felony offense; or
b. ☐ The child was 14 or 15 years of age at the time of the alleged offense, and the current alleged offense is an offense listed in Welfare and Institutions Code section 707(b).
4. **THE COURT ALSO FINDS AND ORDERS**
The court has considered all of the criteria in section 707(a)(2) and makes the following findings and orders on the motion to transfer jurisdiction to the criminal court for the reasons stated on the record:
- a. ☐ The transfer motion is denied. The child is retained under the jurisdiction of the juvenile court.
The next hearing is on (date): _____ at (time): _____
for (specify): _____
- b. ☐ The transfer motion is granted. The prosecutor has shown by a preponderance of the evidence that the child should be transferred to the jurisdiction of the criminal court.
1. ☐ The matter is referred to the District Attorney for prosecution under the general law.
2. ☐ The child is ordered to appear in criminal court on (date): _____ at (time): _____
in Department: _____
3. ☐ The petition filed on (date): _____ is dismissed without prejudice on the appearance date in 2.
4. ☐ The child is to be detained in ☐ juvenile hall ☐ county jail (section 207.1).
5. ☐ Bail is set in the amount of: \$ _____
6. ☐ The child is released ☐ on own recognizance.
☐ to the custody of: _____

Date: _____

JUDICIAL OFFICER

**ORDER TO TRANSFER JUVENILE TO CRIMINAL
COURT JURISDICTION**
(Welfare and Institutions Code, § 707)

<p>a. <input type="checkbox"/> Under a previous order of this court, dated _____, the child was declared a ward under Welfare and Institutions Code section <input type="checkbox"/> 601(a) <input type="checkbox"/> 601(b) <input type="checkbox"/> 602.</p>				
<p>b. <input type="checkbox"/> Under a previous order of this court, dated _____, the child was NOT declared a ward and was placed on summary probation under Welfare and Institutions Code section 725(a).</p>				
c. Child's name and address		d. Age:	e. Date of birth:	f. Sex:
<p>g. Name: <input type="checkbox"/> mother Address: <input type="checkbox"/> father <input type="checkbox"/> guardian <input type="checkbox"/> unknown</p> <p>If mother or father (check all that apply): <input type="checkbox"/> legal <input type="checkbox"/> biological <input type="checkbox"/> presumed <input type="checkbox"/> alleged</p>		<p>h. Name: <input type="checkbox"/> mother Address: <input type="checkbox"/> father <input type="checkbox"/> guardian <input type="checkbox"/> unknown</p> <p>If mother or father (check all that apply): <input type="checkbox"/> legal <input type="checkbox"/> biological <input type="checkbox"/> presumed <input type="checkbox"/> alleged</p>		
<p>i. Name: <input type="checkbox"/> mother Address: <input type="checkbox"/> father <input type="checkbox"/> guardian <input type="checkbox"/> unknown</p> <p>If mother or father (check all that apply): <input type="checkbox"/> legal <input type="checkbox"/> biological <input type="checkbox"/> presumed <input type="checkbox"/> alleged</p>		<p>j. Other (state name, address, and relationship to child):</p> <p><input type="checkbox"/> No known parent or guardian resides within this state. This adult relative lives in this county or is closest to this court.</p>		
<p>k. Attorney for child (if known): Address:</p> <p>Phone number:</p>		<p>l. Child is <input type="checkbox"/> not detained <input type="checkbox"/> detained</p> <p>Date and time of detention (custody): Current place of detention (address):</p>		

Page 1 of 2

CHILD'S NAME:

CASE NUMBER:

2. The child is a: ☐ probationer or ☐ ward of the court under Welfare and Institutions Code section ☐ 601 ☐ 602 ☐ 725(a) and the child has violated a condition of probation or order of the court.
(State supporting facts concisely, and number them 1, 2, etc.)
☐ See Attachment 2.

3. The recommended ☐ modification ☐ consequence is:
- a. ☐ Removal from the custody of a ☐ parent ☐ guardian ☐ relative ☐ friend
 - b. ☐ Placement in a foster home or relative's home
 - c. ☐ Commitment to a private institution
 - d. ☐ Commitment to a county institution
 - e. ☐ Commitment to the California Department of Corrections and Rehabilitation, Division of Juvenile Facilities
 - f. ☐ To be determined
 - g. ☐ Other *(specify)*:

4. ☐ The child violated nonwardship probation. Petitioner requests a hearing be set under Welfare and Institutions Code section 725(a) to decide if the child should be a ward and determine the appropriate disposition.

5. ☐ Number of pages attached: _____

**TO PARENTS OR OTHERS LEGALLY
RESPONSIBLE FOR THE SUPPORT OF THE CHILD**

You and the estate of your child may be jointly and severally liable for the cost of the care, support, and maintenance of your child in any placement or detention facility, the cost of legal services for your child or you by a public defender or other attorney, the cost of supervision of your child by order of the juvenile court, and the cost of any restitution owed to the victim.

W17-02

Juvenile Law: Implementation of Proposition 57, the Public Safety and Rehabilitation Act of 2016 (Amend Cal. Rules of Court, rules 4.116, 5.766, 5.768, and 5.770; repeal rules 4.510 and 5.772; revise forms JV-600, JV-642, JV-710, and JV-735; approve form JV-824)

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

	Commentator	Position	Comment	Committee Response
	David Broady Senior Deputy District Attorney Placer County District Attorney's Office	AM	<p>Please accept my public comment concerning the implementation of Proposition 57 regarding the transfer of juvenile offenders to courts of adult criminal jurisdiction per Welfare and Institutions Code Section 707. I applaud the committee for its work on this challenging issue and the necessary extensive re-write of the applicable Court Rules and Judicial Council Forms.</p> <p><u>I would ask for one change to the Rule and Forms, regarding a requirement that the juvenile court specify its reasons for denying a transfer to adult court</u>, much the same as the proposed rule requires the juvenile court to specify its reasons for granting a transfer to adult court.</p> <p>The current proposed language, that I would slightly modify is: <i>If the court denies a transfer of jurisdiction to the criminal court, the court must recite the basis for its decision in an order entered upon the minutes.</i></p> <p>This would require a change to Rule 5.770(c), and Form JV-710, heading 5(a). The Form JV-710 (5)(a) would require additional language mirroring that already proposed for a granting of a 707 motion, to require the juvenile court to specify the statutory criteria upon which court relied in deciding to deny the 707 transfer to adult court.</p>	<p>The committee agrees that it is a best practice for the juvenile court to provide its reasons for granting or denying a transfer motion, but the text of the statute only requires findings when the motion is granted. The committee concluded that it was best for the rule to adhere closely to this statutory requirement. However, the committee has added an Advisory Committee comment identifying this as a best practice and urging courts to follow it.</p> <p>The committee has reworked the form to delete the criteria and the check boxes and instead refer to the statute and require the reasons to be stated on the record.</p>

W17-02

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	Commentator	Position	Comment	Committee Response
			I request the committee consider this change to allow both parties equal footing in requesting writ or appellate review of a juvenile court’s decision on a 707 motion. This additional detail and required findings would permit a reviewing court meaningful review of the juvenile court’s exercise of discretion and consideration of the facts and law present in each case. Without requiring the juvenile court to specify the basis of its finding in denying a 707 motion, the People will lack a detailed record of review for a reviewing court to assess the lower court’s exercise of discretion. This result will unfairly prejudiced the prosecution, and realistically make the juvenile court denial of transfer the final word on the issue. Though the juvenile court does exercise tremendous discretion in these decisions, there must be some reasonable means to review 707 transfer decision under the statutory criteria implemented pursuant to Proposition 57.	
	California Judges Association Lexi Howard Legislative Director	N	Does the proposal appropriately address the stated purpose? Partially. Prop.57, and 2016’s SB 382, follows the line of U.S. and California Supreme Court cases that require youth to be treated differently than adults due to the developmental differences and immaturity inherent in young people. In addition to the procedural changes, the proposed	The committee has addressed the specific suggestions for additional guidance below and included an Advisory Committee comment that reflects the intent language in Proposition 57.

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Juvenile Law: Implementation of Proposition 57, the Public Safety and Rehabilitation Act of 2016 (Amend Cal. Rules of Court, rules 4.116, 5.766, 5.768, and 5.770; repeal rules 4.510 and 5.772; revise forms JV-600, JV-642, JV-710, and JV-735; approve form JV-824)

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	Commentator	Position	Comment	Committee Response
			rules should provide guidance for adopting the new jurisprudence that accompanies the new transfer of jurisdiction hearings. Would the proposal provide cost savings? No. Prop. 57 will result in additional costs to the court, primarily due to the increase in Transfer of Jurisdiction Hearings, including likely expert witness fees. The proposal is helpful to the implementation of the new rules and providing standardized forms to record the court's findings. To that extent there may be cost savings because courts will be well-prepared to handle the new hearings and thereby reducing delays. What would the implementation requirements be for the courts? In addition to training staff on the procedures for the new hearings, courts will need to create time and courtroom space to conduct the new hearings and train juvenile bench officers on adolescent development. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. How well would this proposal work in courts of different sizes? The proposed rules will encourage consistent	The committee has taken note of this comment and others like it and has revised accordingly its estimate of the impacts of Proposition 57 in its report to the Judicial Council. The committee has included these impact of the Proposition in its report to the council. The committee has opted to make the proposal effective May 22, 2017. The committee has retained the forms as optional.

W17-02

Juvenile Law: Implementation of Proposition 57, the Public Safety and Rehabilitation Act of 2016 (Amend Cal. Rules of Court, rules 4.116, 5.766, 5.768, and 5.770; repeal rules 4.510 and 5.772; revise forms JV-600, JV-642, JV-710, and JV-735; approve form JV-824)

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	Commentator	Position	Comment	Committee Response
			<p>procedures in all counties, regardless of size. The JV-600, JV-642, JV-710 and other hearing forms should continue to be optional to allow flexibility for courts of different sizes. The JV-824 form is not necessary.</p> <p>We offer the following additional comments: Rule 4.116: Certification to Juvenile Court; we support this revision.</p> <p>Rule 4.510: Reverse Remand Should the date for repeal of rule 4.510 be delayed beyond September 1, 2017 to accommodate cases that precede the enactment of Prop. 57? Yes. If so, what should be the effective date of the repeal? January 1, 2019 Any sunset date needs to provide sufficient time for pending cases and writs to resolve, which could take at least a year or longer.</p> <p>Rule 5.766: General Provisions Regarding Rule 5.766(a), we recommend this be clarified to add “felony”, as follows: “(a)(2) The child was 14 years or older at the time of the alleged felony offense listed in section 707(b).” This proposed change takes into account that a wobbler 707(b) offense must</p>	<p>The committee agrees and has removed the JV-824 from the proposal and amended rule 5.770 to include a requirement that the parties be advised of their rights to have the court’s decision reviewed.</p> <p>No response required.</p> <p>Given the uncertainty, the committee has opted not to repeal rule 4.510 as long as Penal Code section 1170.17 remains in the law.</p> <p>The committee agrees that this change would clarify the rule and has made clear in the opening of the rule that at a minimum there must be a felony alleged.</p>

W17-02

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	Commentator	Position	Comment	Committee Response
			<p>be alleged as a felony to qualify for transfer to adult court. See In re Sim J. (1995) 38 Cal.App.4th 94 [“Section 707(b) is reserved for the most serious offenses and does not include misdemeanor violations.”]</p> <p>Regarding Rule 5.766(c), we recommend this be revised as follows: “The transfer of jurisdiction hearing must be held and the court must rule on the issue of the request to transfer jurisdiction before the jurisdiction hearing begins. Absent a continuance under rule 5.776 or the child’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.”</p> <p>Rule 5.768: Report of probation officer (a) Contents of Report We think that the short statement “... including information regarding all of the criteria in section 707(a)(2)” does not accomplish the stated purpose of reflecting the new terminology. The rule should clearly reflect the changes by Prop 57 and SB 382 to acknowledge the developmental differences between youth and adults (Miller/Roper/Graham). This paragraph should be amended to specify the complete language of each criteria, including the “clarifications,” described in WIC 707(a)(2) to emphasize that the report must analyze the</p>	<p>The committee has adopted this proposed revision to clarify the timeline for the jurisdiction hearing to begin.</p> <p>The committee has concluded that a statutory reference is preferable to restating the text of the statute in the rule, but has opted to delete provisions from the rule that do not reflect the statute.</p>

W17-02

Juvenile Law: Implementation of Proposition 57, the Public Safety and Rehabilitation Act of 2016 (Amend Cal. Rules of Court, rules 4.116, 5.766, 5.768, and 5.770; repeal rules 4.510 and 5.772; revise forms JV-600, JV-642, JV-710, and JV-735; approve form JV-824)

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	Commentator	Position	Comment	Committee Response
			<p>child’s developmental status and maturity.</p> <p>(c) Copies Furnished We recommend this be revised as follows: “The probation officer’s report on the behavioral patterns and social history of the child must be furnished to the child, the parent or guardian, and all counsel at least 24 hours two court days before commencement of the hearing on the motion. A continuance of <u>at least</u> 24 hours must be granted on the request of any party who has not been furnished the probation officer’s report in accordance with this rule.”</p> <p>- The two court day requirement is similar to the due date for the social study prior to a disposition hearing (Rule 5.785). Given the stakes of a transfer hearing, it is important to provide all parties with at least the same amount of time to review a disposition report.</p> <p>- Likewise, the parties must be provided with adequate time to review an untimely filed probation officer’s report.</p> <p>Rule 5.770: Conduct of transfer of jurisdiction hearing</p> <p>(a) Burden of Proof Proposition 57 eliminated the requirement that the court must find fitness under each and every one of the criteria for any child pending a transfer of jurisdiction hearing. To reflect this change, the rule should be modified to make clear that the court must consider the totality of</p>	<p>The committee agrees that two court days is a more appropriate deadline for the provision of the probation report and has clarified that the continuance period for failure to meet this deadline should be <u>at least</u> 24 hours.</p> <p>Since there is nothing in the rule requiring findings on each of the criteria, it does not appear to the committee that clarification is required.</p>

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	Commentator	Position	Comment	Committee Response
			<p>the circumstances and that denying the motion to transfer need not be based on findings on each of the criteria.</p> <p>(b) Criteria to Consider This section should also be amended to specify that although the court must consider all of the criteria in Section 707(a)(2), the court does not need to find that juvenile court jurisdiction should be retained based on each and every criteria. Also, the list of the criteria should include all of the language from Section 707(a)(2), not just the language of the historical five criteria.</p> <p>Deletion of 5.772(b): Prima facie showing This paragraph should be included under Rule 5.770. Courts may need guidance whether the prosecution must still establish a prima facie case. Although fitness hearings have been eliminated, the Edsel P. analysis suggests that a youth is still entitled to challenge the sufficiency of the evidence at a transfer of jurisdiction hearing. The Edsel P. decision was based not only on the issue of fitness, but also on constitutional considerations and the issue of detention. <i>Edsel P. v. Superior Court</i> (1985) 165 Cal.App.3d 763.</p> <p>Form JV-600 On page 2, Box 3 is unclear whether checking this box satisfies the required notice of the motion and the motion. The prosecutor's</p>	<p>The committee has deleted the list of criteria from the rule and replaced it with a statutory reference and specifically cited the statutory guidance added by SB 382. In addition, the committee has added an Advisory Committee comment highlighting the intent of SB 382 and Proposition 57 and directing the court to apply the criteria as that statute requires.</p> <p>The committee agrees that the right to a prima facie finding that the alleged offense is an offense that is eligible for transfer of jurisdiction is a burden the prosecuting agency should bear before the court holds the transfer hearing and has adapted the existing language from rule 5.772(b) and added it rule 5.766(c).</p> <p>This item has been modified to require that the prosecution specify the alleged offense(s) that will be the subject of the transfer motion.</p>

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	Commentator	Position	Comment	Committee Response
			<p>motion should be filed separately from the petition. This language should be changed to make clear that by checking the box, the prosecutor is merely providing notice of the motion.</p> <p>Form JV-642 Box 13 should likewise be modified to distinguish between the prosecutor's notice of the motion and the filing of the motion.</p> <p>Form JV-710 Does the revised JV-710 order form allow the court to accurately and comprehensively document its findings and orders? No.</p> <ul style="list-style-type: none">- Box 3 should be amended to include that the finding is by a preponderance of the evidence.- Because the court must consider all of the criteria, but need not make findings of fitness on each of the criteria, checking the boxes will not provide a sufficient "basis for its decision." Instead, a narrative section may be more appropriate for the court to recite how the totality of the criteria supports the decision.- Box 5: The order must show that the court ruled on the motion. The form should have boxes that show whether the motion was denied or granted, in addition to the order	<p>The committee believes that this form is clear and does not need modification.</p> <p>See responses to specific suggestions below.</p> <p>The reworked form includes that the order to transfer is made based on a finding by a preponderance of the evidence.</p> <p>The committee has reworked the form to delete the criteria and the check boxes and instead refer to the statute and require the reasons to be stated on the record.</p> <p>The form has been changed to include whether the motion was denied or granted.</p>

W17-02

Juvenile Law: Implementation of Proposition 57, the Public Safety and Rehabilitation Act of 2016 (Amend Cal. Rules of Court, rules 4.116, 5.766, 5.768, and 5.770; repeal rules 4.510 and 5.772; revise forms JV-600, JV-642, JV-710, and JV-735; approve form JV-824)

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	Commentator	Position	Comment	Committee Response
			retaining jurisdiction or transferring jurisdiction	
			Form 735 We seek clarification about why this form included in the proposal.	This form needed a technical change to remove the letter (a) after section 602 in item 1.a.
			Form JV-824 Will the proposed new writ form improve the process for challenging transfer orders? No. While the JV-824, like the existing dependency equivalent JV-825, may be a helpful checklist, the form does not translate well to the delinquency and transfer of jurisdiction hearing format. The dependency writ from an order setting a Section 366.26 hearing is a statutory writ while the writ from a transfer of jurisdiction hearing is a writ of mandate. Rule 8.452, which governs the dependency writ, requires that a memorandum be attached to the petition. There is no similar guidance for the proposed JV-824. The proposed JV-824 form will at best result in unnecessary additional pages being filed with the writ, and at worst, lead to confusion and failure to preserve the writ. Additionally, it is highly unlikely that the youth or a non-attorney will ever directly file a writ following a transfer of jurisdiction hearing. A new form is not necessary. Instead of the new form, we recommend amending Rule of Court 5.990 to include an advisement of right to review a decision in a	The committee agrees and has removed the JV-824 from the proposal and amended rule 5.770 to include a requirement that the parties be advised of their rights to have the court’s decision reviewed.

W17-02

Juvenile Law: Implementation of Proposition 57, the Public Safety and Rehabilitation Act of 2016 (Amend Cal. Rules of Court, rules 4.116, 5.766, 5.768, and 5.770; repeal rules 4.510 and 5.772; revise forms JV-600, JV-642, JV-710, and JV-735; approve form JV-824)

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	Commentator	Position	Comment	Committee Response
			transfer hearing. Proposal: Rule 5.990(d) Advisement requirements when court rules on the request to transfer jurisdiction under section 707 When the court rules on the request to transfer the child to the jurisdiction of the criminal court pursuant to Welfare and Institutions Code section 707, the court must advise all parties present that appellate review of the order must be by petition for extraordinary writ. The advisement may be given orally or in writing when the court makes the ruling. The advisement must include the time for filing the petition for extraordinary writ.	The committee has added the advisement requirement to rule 5.770(d).
	California Public Defender's Association Martin F. Schwarz Juvenile Defense Committee	N/I	Does the proposal appropriately address the stated purpose? Yes, taking into consideration the responses to the specific comments below as well as the following: Proposed Amendments to rule 5.766 In part, subdivision (a), states "A child who is the subject of a petition under section 602(a) and who was 14 years or older at the time of the alleged offense may be considered for prosecution under the general law in a court of criminal jurisdiction." However, a child between the ages of 14 and 15 may only be transferred to a court of criminal jurisdiction for an offense listed in subdivision (b) of Welfare	No response required. The committee has clarified this language to make it clearer that 14 and 15 are only subject to transfer for a 707(b) by moving that language ahead of the provisions for those 16 and 17 and has corrected the outdated reference to fitness.

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	Commentator	Position	Comment	Committee Response
			<p>and Institutions Code section 707 whereas a minor 16 years or older may be transferred for any felony offense. (Welf. & Inst. Code, § 707, subd. (a)(1).) To avoid confusion, the language of the rule should include this distinction. The header to subdivision (c), reads "time of fitness hearing-rules 5.774, 5.776." The word "fitness" should be replaced with the word "transfer."</p> <p>Proposed Amendments to rule 5.768 In 2015, AB 382 greatly expanded the criteria that a court must look to determine whether a child should remain in the juvenile justice system. The bill, which amended Welfare and Institutions Code section 707, was an acknowledgment that this critical determination should be based on what we know about adolescent development and by having judicial officers examine the most relevant information in the area on which to base their decision. These criteria include maturity, intellectual capacity, physical, mental and emotional health, impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult or peer pressure on the child's action, the effect of the child's environment and childhood trauma, the child's potential to grow and mature, and the adequacy of services previously provided. The proposed amendments to the rule do not require the probation report to consider these factors. The rule, specifically</p>	<p>The committee has concluded that a statutory reference is preferable to restating the text of the statute in the rule, but has opted to delete provisions from the rule that do not reflect the statute.</p>

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	Commentator	Position	Comment	Committee Response
			<p>subdivision (a), should require probation to address these factors in its report so that the court can base its decision on the most relevant information available.</p> <p>Subdivision (b) requires the probation officer preparing the report to make a determination as to whether the child should be retained under the jurisdiction of the juvenile court or transferred to the jurisdiction of the criminal court. The header to the subdivision cites to Welfare and Institutions Code section 707 and 281 as authority for this proposition. However, section 707 does not contain a requirement that probation provide a recommendation. Section 281 is a general statute authorizing probation in juvenile cases to investigate, write reports and make recommendations "upon order of any court." Requiring probation to make a recommendation without a court order to do so is not supported by either statute. Moreover, since the probation officer will not have heard the evidence presented at the transfer hearing, he or she will not be in a position to make an informed recommendation at the time the report is filed with the court.</p> <p>Consequently, we recommend deleting this subdivision in its entirety. Alternatively, should a court find a recommendation helpful, the subdivision could be amended to indicate that a court could request probation make a recommendation under Welfare and Institution</p>	<p>The committee has clarified the rule to require a recommendation from probation only if it is specifically ordered by the court.</p>

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	Commentator	Position	Comment	Committee Response
			<p>Code section 281 but that probation is not required to make a recommendation absent such an order.</p> <p>Proposed Amendments to rule 5.770 With respect to subdivision (b), the concern is the same as indicated above for rule 5.768(a) in that the "criteria to consider" does not include the factors related to adolescent development added to Welfare and Institutions Code section 707 by AB 382. The court is required to consider those factors and their exclusion from the "criteria to consider" might suggest otherwise to judicial officers and advocates. Subdivision (c) addresses "findings under section 707(a)" and reads "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 upon the minutes." While this is a true statement of law and is taken directly from Welfare and Institutions Code section 707, subdivision (a)(2) ["the court shall recite the basis for its decision in an order entered upon the minutes"], it does not include the critical language from the preceding sentence in the statute that requires the court to consider all the statutory criteria in their totality. That sentence reads, "In making its decision, the court shall consider the criteria specified in subparagraphs (A) to (E) below." Including clarifying language to this effect in the rule would remind trial courts that findings need to be based on an</p>	<p>The committee has deleted the list of criteria from the rule and replaced it with a statutory reference and specifically cited the statutory guidance added by SB 382. In addition, the committee has added an Advisory Committee comment highlighting the intent of SB 382 and Proposition 57 and directing the court to apply the criteria as that statute requires.</p>

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	Commentator	Position	Comment	Committee Response
			<p>evaluation of all factors as a whole and would avoid confusion.</p> <p>Will the proposed new writ form improve the process for challenging transfer orders? No. In our experience, neither public defender offices nor district attorney offices typically file extraordinary writ petitions in the Court of Appeal using Judicial Council forms. There is no reason to believe this will change with a Judicial Council writ form in this specific instance.</p> <p>Instead, writ petitions challenging an order granting or denying transfer from juvenile court to adult court and that these writs of mandate will be filed in accordance with California Rule of Court, rule 8.490. To the extent the form will be used by some practitioners, its brevity contrasts sharply with the complexity of the subject matter at issue and its use will inevitably lead to sloppy drafting and a poorly articulated presentation of the issues in the Court of Appeal.</p> <p>Does the revised JV-710 order form allow the court to accurately and comprehensively document its findings and orders? No. The concern is primarily the manner in which the court memorializes findings in support of a transfer order in section 3 of the form. That section contains the five factors the</p>	<p>The committee agrees and has removed the JV-824 from the proposal and amended rule 5.770 to include a requirement that the parties be advised of their rights to have the court's decision reviewed.</p> <p>The committee has reworked the form to delete the criteria and the check boxes and instead refer to the statute and require the reasons to be stated on the record.</p>

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	Commentator	Position	Comment	Committee Response
			<p>court must consider for transfer and then asks the court to check a box next to each factor on which transfer was based. This is an outdated holdover from pre-Proposition 57 fitness hearings and needs to be changed to conform with the change in the law. Prior to Proposition 57, a juvenile court judicial officer could declare a minor unfit for juvenile court by finding the minor unfit under a single factor. (Cal. Rules of Court, rule 5.770(c)(2)(B).) The amendments to Welfare and Institutions Code section 707, subdivision (a)(2), clarify that the court must now look to the totality of circumstances, not a single factor: "In making its decision, the court shall consider the criteria specified in subparagraphs (A) to (E) below." Moreover, this change in the law is recognized by the proposed amendments to rule 5. 770. There is an inherent and irreconcilable tension between asking the court to consider the totality of circumstances on the one hand and asking the court to check a box related to an individual circumstance in support of transfer.</p> <p>Should the date for repeal of rule 4.510, which implements the reverse remand procedure in Penal Code section 1170.17 be delayed beyond September 1, 2017 to accommodate cases that precede the enactment of Prop. 57? If so, what should be the effective date of the repeal? Yes. Recently, in the case of People v. Superior Court of Riverside County (Jan. 19, 2017,</p>	<p>Given the uncertainty, the committee has opted not to repeal rule 4.510 as long as Penal Code section 1170.17 remains in the law.</p>

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	Commentator	Position	Comment	Committee Response
			E067296) _Cal.App.5th_ [2017 Cal.App. LEXIS 35], the Court of Appeal ruled that Proposition 57 required that youth who were directly filed on in adult court prior to the passage of the proposition should be sent back to the juvenile court. However, until this issue is firmly settled, Penal Code section 1170.17 and rule 4.510 will continue to be viable. Accordingly, we propose a sunset clause extending the current rule to September 1, 2018.	
	Hon. Donna Quigley Groman Superior Court of Los Angeles County	AM	Does the proposal appropriately address the stated purpose? Yes Will the proposed new writ form improve the process for challenging transfer orders? Yes Does the revised JV-710 order form allow the court to accurately and comprehensively document its findings and orders? Yes Should the date for repeal of rule 4.510, which implements the reverse remand procedure in Penal Code section 1170.17 be delayed beyond September 1, 2017 to accommodate cases that precede the enactment of Prop. 57? If so, what should be the effective date of the repeal? Keep it in effect until the legislature repeals Pen Code section 1170.17	No response required. No response required. No response required. The committee concurs, and has opted not to repeal rule 4.510 as long as Penal Code section 1170.17 remains in the law.

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	Commentator	Position	Comment	Committee Response
			<p>*The commentator suggested revisions to clarify the rules and forms. Many of these suggestions were also included in the comments from the Superior Court of Los Angeles and are addressed there. The remainder are summarized here:</p> <p>Rule 5.768 Items 1-4 are no longer included in section 707</p> <p>In (c) delete the word fitness and add <u>on the motion for transfer of jurisdiction</u> after hearing.</p> <p>Rule 5.770 (d) This language was removed from section 707 by Prop. 57</p> <p>Form JV-600: Page, 2 item 3, “if the notice may be given in the petition, the DA should identify what offense(s) are alleged to be an offense under 707(b).”</p> <p>Form JV-642 Item 13: Add <u>and no plea should be taken until the transfer motion is decided</u> at the end of the item.</p> <p>Form JV-824: In the 5th instruction add <u>with the clerk of the reviewing court</u> at the end of the instruction. In item 4.b.: reword as <u>denying a motion to</u></p>	<p>The committee has deleted these from the rule.</p> <p>The committee has deleted this provision.</p> <p>The committee has deleted this subdivision from the rule.</p> <p>The committee has added space for the eligible offense(s) to be listed.</p> <p>The committee notes that this language is in the rule and need not be added to the form as it constrains the court and not the child.</p> <p>The committee has removed this form from the proposal.</p>

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	Commentator	Position	Comment	Committee Response
			<u>transfer jurisdiction from juvenile to criminal court.</u>	
	Los Angeles County District Attorney's Office Mark Burnley Deputy-in-Charge	AM	<p>Rule 5.766 – “Prosecuting attorney” should be changed to “the district attorney or other appropriate prosecuting office.”</p> <p>Rule 5.768 – the proposed amendment to this rule fails to delete the word “fitness” in 5.768(a)(5).</p> <p>Also, none of the criteria set forth in 5.768(a)(1-5) are contained in the Prop. 57 amended language in 707(a)(2)(A-E), but that language is contained within the current version of 5.768.</p> <p>Rule 5.770 – the proposed version does not track Prop. 57's amendments. Here's our suggestions for 5.770:</p> <p>5.770(b) Criteria to consider (707): Following submission and consideration of the probation officer's report and any other relevant that the petitioner or the minor may wish to submit, the court shall decide whether the minor should be transferred to a court of criminal jurisdiction. The court shall consider and address all of the criteria set forth in section 707(a)(2)(A-E).</p> <p>5.770(c) If the court orders or denies a transfer of jurisdiction, the court shall recite the basis for</p>	<p>The committee agrees and has modified this language to track section 707.</p> <p>The committee has corrected this reference.</p> <p>The committee has deleted these criteria from the rule.</p> <p>The committee has deleted the list of criteria from the rule and replaced it with a statutory reference and specifically cited the statutory guidance added by SB 382. In addition, the committee has added an Advisory Committee comment highlighting the intent of SB 382 and Proposition 57 and directing the court to apply the criteria as that statute requires.</p> <p>The committee agrees that it is a best practice for the juvenile court to provide its reasons for</p>

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			<p>its decision in an order entered upon the minutes.</p> <p>Rationale - Per Proposition 57, the court shall recite the basis for its decision when it grants a motion to transfer. (WIC 707(a)(2).) However, the court should recite the basis for its decision whether the motion to transfer is denied or granted. Requiring the court to state its reasons for denying a motion to transfer could potentially reduce the number of writs filed by the People and a complete appellate record is always better than an incomplete record. Also, requiring the court to always make a complete record affords justice to all parties involved in the proceeding.</p>	<p>granting or denying a transfer motion, but the text of the statute only requires findings when the motion is granted. The committee concluded that it was best for the rule to adhere closely to this statutory requirement. However, the committee has added an Advisory Committee comment identifying this as a best practice and urging courts to follow it.</p>
	Orange County Bar Association	N	<p>Does the proposal appropriately address the stated purpose? Yes, taking into consideration the comments and suggestion presented below.</p> <p>Will the proposed new writ form improve the process for challenging transfer orders? No. In the County of Orange, neither defense counsel nor the district attorney's office typically file extraordinary writ petitions in the Court of Appeal using Judicial Council forms. It is anticipated this will hold true for writ petitions challenging an order granting or denying transfer from juvenile court to adult court and that these writs of mandate will be</p>	<p>No response required.</p> <p>The committee agrees and has removed the JV-824 from the proposal and amended rule 5.770 to include a requirement that the parties be advised of their rights to have the court's decision reviewed.</p>

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			<p>filed in accordance with California Rule of Court, rule 8.490. Forms are typically used by self-represented litigants. Although Welfare and Institutions Code sections 634 and 700 allow minors to waive their right to counsel, it is a rare occurrence. To the extent attorneys representing minors will use the writ form, the brevity of the form is in sharp contrast to the complexity of the transfer criteria and will inevitably lead to poorly articulated and insufficient presentation of the issues for review. Therefore, we recommend the writ form not be adopted.</p> <p>Does the revised JV-710 order form allow the court to accurately and comprehensively document its findings and orders?</p> <p>Section 3 of the form contains the five factors the court must consider for transfer and then asks the court to check a box next to each factor on which transfer was based. This is an anachronistic remainder from fitness hearings and does not comport with the change in the law brought about by Proposition 57. Prior to Proposition 57, a juvenile court judicial officer could declare a minor unfit for juvenile court by finding the minor unfit under a single factor. (Cal. Rules of Court, rule 5.770(c)(2)(B).) The amendments to Welfare and Institutions Code section 707, subdivision (a)(2), clarify that the court must now look to the totality of circumstances, not a single factor: “In making its decision, the court shall consider the criteria</p>	<p>The committee has reworked the form to delete the criteria and the check boxes and instead refer to the statute and require the reasons to be stated on the record.</p>

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			<p>specified in subparagraphs (A) to (E) below.” Moreover, this change in the law is recognized by the proposed amendments to rule 5.770. Should the date for repeal of rule 4.510, which implements the reverse remand procedure in Penal Code section 1170.17 be delayed beyond September 1, 2017 to accommodate cases that precede the enactment of Prop. 57? If so, what should be the effective date of the repeal? Yes. We propose a sunset clause extending the current rule to September 1, 2018. Recognizing the issue of remand to juvenile court for cases which were direct filed was touched on in the recent case of <i>People v. Superior Court of Riverside County</i> (Jan. 19, 2017, E067296) __ Cal.App.5th __ [2017 Cal.App. LEXIS 35], until the issue is firmly settled, Penal Code section 1170.17 and rule 4.510 will continue to be viable.</p>	<p>Given the uncertainty, the committee has opted not to repeal rule 4.510 as long as Penal Code section 1170.17 remains in the law.</p>
	Pacific Juvenile Defender Center Sue Burrell Policy Director	N/I	<ul style="list-style-type: none">• Does the proposal appropriately address the stated purpose? <p>Yes, with the understanding that certain changes to the proposed language should be made for consistency with the new changes to transfer hearings and for clarity.</p> <ul style="list-style-type: none">• Will the proposed new writ form improve the process for challenging transfer orders?	No response required.

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			<p>No. While we appreciate the desire to provide as much guidance as possible, we believe the form is unnecessary and that it will cause more confusion than it resolves. While writ forms may be useful in other areas of the law, such as habeas corpus, where there may be pro per petitions or writ practice is seldom used, such a form has little usefulness here.</p> <p>Writ practice in fitness/transfer cases is well-established. Moreover, since transfer writs are filed directly in the Court of Appeal and must comply with numerous rules of court, the form is unnecessary. Moreover, it can lend confusion to those who believe the merely filing the form even without an appropriately formatted writ will constitute compliance with the strict 20 day rule for filing transfer writs.</p> <p>We have done these kinds of writs for 40 years without a form. There are many sample writs available in training materials and through public defender offices. We are also concerned that the inevitable brevity of the form may cause users of the form to file writs that are missing essential elements, or that lack the in-depth treatment called for under the new transfer criteria. Providing a form for this kind of complex pleading will inadvertently encourage bad practice. Unlike habeas writs which are filed in trial courts, transfer writs do not need a form. It would be much more beneficial for</p>	<p>The committee agrees and has removed the JV-824 from the proposal and amended rule 5.770 to include a requirement that the parties be advised of their rights to have the court's decision reviewed.</p>

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			<p>practitioners to refer to actual writs or consult the rules of court relating to writs to understand how to present the case and the issues regarding transfer. In addition, the form adds nothing substantive to the writ; but would instead have no useful purpose when appellate court staff or justices determine the merits of the writ petition.</p> <ul style="list-style-type: none">• Does the revised JV-710 order form allow the court to accurately and comprehensively document its findings and orders? <p>No. The form falls back on the old bare bones fitness criteria, and fails to include the much more detailed criteria for transfer. Also, it fails to include some of the critically important procedural changes in the law. We have suggested changes to the form in our comments on specific language.</p> <ul style="list-style-type: none">• Should the date for repeal of rule 4.510, which implements the reverse remand procedure in Penal Code section 1170.17 be delayed beyond September 1, 2017 to accommodate cases that precede the enactment of Prop. 57? <p>Yes. There may be cases playing out for some time to come that involve those sections. One way to handle this would be to place a sunset clause in the rule, repealing it as of a certain date unless a later amendment is made. We suggest a sunset clause extending the current</p>	<p>The committee has reworked the form to delete the criteria and the check boxes and instead refer to the statute and require the reasons to be stated on the record.</p> <p>The committee has opted not to repeal rule 4.510 as long as Penal Code section 1170.17 remains in law.</p> <p>The committee concurs that the rules and forms will not increase the costs of implementing Proposition 57, and will ease the burden on the courts but notes that overall juvenile court workload will be increased by the changes made by Proposition 57.</p>

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			<p>rule to September 1, 2018.</p> <ul style="list-style-type: none">• Would the proposal provide cost savings? If so, please quantify. <p>Yes, providing guidance to the courts in applying the new law, these rules may prevent unnecessary appellate litigation that would follow from application of the old fitness standards and criteria. Thus the rules may have a beneficial effect in preventing harm to young people, and in costs to the system.</p> <p>A recent analysis of the costs of wrongful conviction places the cost of judicial errors at \$194,962 average cost per error. (Criminal Injustice: A Cost Analysis of Wrongful Convictions, Errors, and Failed Prosecutions in California’s Criminal Justice System, UC Berkeley Law, Warren Institute on Law and Social Policy (2015), p. 36.) Of course, the cost of even one young person being unnecessarily relegated to the adult criminal system is enormous, both in terms of the life changing consequences for the youth, the cost of extended confinement for the taxpayers of California, and the lost opportunities to rehabilitate the young person in the juvenile system. If the rules save even a few youth from wrongful transfer, the cost savings will be immense.</p> <ul style="list-style-type: none">• What would the implementation requirements	<p>The committee takes note of this cost and notes that ensuring court review of all transfer motions will take additional time in the juvenile court.</p> <p>The committee concurs that Proposition 57</p>

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			<p>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 may be some costs involved in promulgated new processes and procedures and in training, but they are not optional costs. The law has changed, and courts must adapt to those changes. Proposition 57 is the law, and the proposed rules and forms will help courts to implement the new laws.</p> <ul style="list-style-type: none">• Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? <p>Yes. Proposition 57 took effect on November 9, 2016, so the sooner the rules can go into effect, the better. Courts are already being asked to apply the new law.</p> <ul style="list-style-type: none">• How well would this proposal work in courts of different sizes? <p>The rules do not appear to affect large versus small courts in different ways.</p> <p>//</p> <p>Rule 4.116 Certification to juvenile court. –</p>	<p>implementation will impose costs on the courts.</p> <p>The committee agrees and has proposed that the effective date be moved up to May 22, 2017 directly after council approval.</p> <p>No response required.</p> <p>No response required.</p>

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			<p>No comment.</p> <p>Rule 4.510 Reverse remand.</p> <p>Again, we believe there may be cases playing out for some time to come that involved reverse remand. Our suggestion is that there be a sunset clause for repeal of this rule, absent an intervening action to extend it. We suggest September 1, 2018 as the sunset date.</p> <p>Rule 5.766. General Provisions.</p> <p>Recommendation: We have a number of concerns on this one. First, the language in (a) with respect to eligibility appears to need some clarification. Second, we suggest an additional clarifying sentence in (b). Third, in (c), we request that the word “fitness” be replaced with “transfer. We also suggest a slight rewording of the last sentence in (c) to clarify that the young person may demand a hearing within the statutory time limits.</p> <p>Suggested language for (a) (in red italics):</p> <p>(a) Fitness <u>Transfer of jurisdiction to criminal court hearing</u> (§ 707) A child who is the subject of a petition under section 602(a) and who was 14 years or older at the time of <u>an</u> the alleged offense <u>under section 707, subdivision (b), or 16 years of age or older</u></p>	<p>Given the uncertainty, the committee has opted not to repeal rule 4.510 as long as Penal Code section 1170.17 remains in the law.</p> <p>The committee has clarified the language in this section of the rule to be consistent with the current statutory language.</p>

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		<p><u>at the time of an alleged felony offense</u>, may be considered for prosecution under the general law in a court of criminal jurisdiction. The prosecuting attorney may request a hearing to determine whether the child is a fit and proper subject to be dealt with under the juvenile court law make a motion to transfer the child from juvenile court to a court of criminal jurisdiction, in one of the following circumstances:</p> <p>No further comments on 5.766 (a).</p> <p>Suggested addition to (b):</p> <p>(b) Notice (§ 707) Notice of the fitness <u>transfer</u> hearing on transfer of jurisdiction must be given at least five judicial days before the <u>transfer fitness</u> hearing. <u>In no case may notice be given following the attachment of jeopardy.</u></p> <p>Suggested change in heading for (c):</p> <p>(c) Time of fitness <u>transfer</u> hearing—rules 5.774, 5.776</p> <p>The <u>fitness transfer of jurisdiction</u> hearing must be held and the court must rule on the issue of <u>fitness the request to transfer jurisdiction</u> before the jurisdictional hearing begins. Absent a continuance, <u>Unless the youth waives time,</u> the jurisdictional hearing must begin within</p>	<p>The committee has adopted these suggested revisions.</p> <p>The committee has corrected this heading and text to substitute transfer for fitness.</p> <p>The committee has clarified this provision of the</p>

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			<p>the time limits under rule 5.774.</p> <p>Rule 5.768. Report of the Probation Officer.</p> <p>Recommendation:</p> <p>The proposed language for subdivision (a) on the contents of the probation officer's report should be substantially revised. Although it is mostly technically correct, it fails to provide guidance on the most important part of the new transfer laws in vastly expanding the factors that must be to be considered in transfer decisions. We are very concerned that, without specific guidance on the expanded factors, probation officers will simply fall back on their old template for reports, and fail to address the developmental and other factors contemplated by the legislation. The language in proposed (1) to (5) is truly insignificant compared with those factors, and surely, probation officers do not need the rule to tell them that they can include statements from various people.</p> <p>Also, in (c), we recommend that the report be furnished 48 hours prior to the transfer hearing instead of only 24. That would bring the rule into conformity with the timeline for disposition social study reports. Also, we suggest removing the last sentence providing a continuance of 24 hours as a remedy for failure to comply with the rule. The provision seems to inadvertently</p>	<p>rule to include the waiver.</p> <p>The committee has concluded that a statutory reference is preferable to restating the text of the statute in the rule, but has opted to delete provisions from the rule that do not reflect the statute.</p> <p>The committee agrees that more time to review the report is needed, and that two court days is a more appropriate deadline for the provision of the probation report. It has also clarified that the continuance period for failure to meet this deadline should be <u>at least</u> 24 hours.</p>

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		<p>suggest that failure to comply with providing the report may be a routine occurrence, so it seems stronger just to announce the rule as the expectation. If the remedy language is retained, it should also be increased to 48 hours.</p> <p>Suggested language for (a)</p> <p>(a) Contents of report (§ 707) The probation officer must investigate the issue of fitness <u>prepare</u> and submit to the court a report on the behavioral patterns and social history of the child being considered. The report must include information relevant to the determination of whether or not the child would be amenable to the care, treatment, and training program available through the facilities of the juvenile court, including information regarding all of the criteria listed in rules 5.770 and 5.772 <u>should be retained under the jurisdiction of the juvenile court or transferred to the jurisdiction of the criminal court. <i>The report must consider any relevant factor and including information regarding all of the criteria specified in section 707(a)(2)(A-E), including:-</i></u></p> <p><u><i>(1) The degree of criminal sophistication exhibited by the child. (707(a)(2)(A)).</i></u> <u><i>This includes, but is not limited to, the child's age, maturity, intellectual capacity, and physical, mental, and emotional health at the</i></u></p>	<p>See response above concerning the probation report.</p>

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			<p><u>time of the alleged offense, the child's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the child's actions, and the effect of the child's family and community environment and childhood trauma on the child's criminal sophistication.</u></p> <p><u>(2) Whether the child can be rehabilitated prior to the expiration of the juvenile court's jurisdiction. (707(a)(2)(B)). This includes, but is not limited to, the child's potential to grow and mature.</u></p> <p><u>(3) The child's previous delinquent history. (707(a)(2)(C)). This includes but is not limited to the seriousness of the child's previous delinquent history and the effect of the child's family and community environment and childhood trauma on the child's previous delinquent behavior.</u></p> <p><u>(4) Success of previous attempts by the juvenile court to rehabilitate the child. (707(a)(2)(D)). This includes, but is not limited to, the adequacy of the services previously provided to address the child's needs.</u></p> <p><u>(5) The circumstances and gravity of the offense alleged in the petition to have been committed by the child. (707(a)(2)(E)).</u></p>	

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			<p><i><u>This includes, but is not limited to, the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development.</u></i></p> <p><u>The report must also include any written or oral statement offered by the victim pursuant to section 656.2.</u> The report may also include information concerning:</p> <p>(1) The social, family, and legal history of the child; (2) Any statement the child chooses to make regarding the alleged offense; (3) Any statement by a parent or guardian; (4) If the child is or has been under the jurisdiction of the court, a statement by the social worker, or probation officer, or Youth Authority parole agent who has supervised the child regarding the relative success or failure of any program of rehabilitation; and (5) Any other information relevant to the determination of fitness.</p> <p>Suggested language for (c):</p> <p>(c) Copies furnished The probation officer's report on the behavioral patterns and social history of the child must be furnished to the child, the parent or guardian,</p>	

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			<p>and all counsel at least 48 24 hours before commencement of the fitness hearing on the motion. A continuance of 24 hours must be granted on the request of any party who has not been furnished the probation officer's report in accordance with this rule.</p> <p>Rule 5.770 Conduct of fitness transfer of jurisdiction hearing under section 707(a)(1)</p> <p>In (b), we are concerned that the language provides only a pre-S.B. 382 and Pre-Prop 57 bare bones skeleton of the criteria to be considered by the court. Those measures have dramatically transformed and enriched the universe of factors to be considered by the court. Section 707 provides that the court <u>shall</u> consider this expanded universe of factors.</p> <p>In (c), there is a need to clarify that the previously existing language that required courts to find the young person fit on all five criteria has been removed from the law. Under the rules of statutory construction, the removal of something so important must be considered to be intentional and to have some meaning. The rule should reflect this change. The situation now is similar to many other areas of the law in which courts are asked to make decisions based on the totality of the circumstances. For example, courts must determine whether a juvenile statement is</p>	<p>See response on the timing of the provision of the probation report above.</p> <p>The committee has deleted the list of criteria from the rule and replaced it with a statutory reference and specifically cited the statutory guidance added by SB 382. In addition, the committee has added an Advisory Committee comment highlighting the intent of SB 382 and Proposition 57 and directing the court to apply the criteria as that statute requires.</p>

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			<p>voluntary based on a totality of the circumstances including age, education, and degree of intelligence, as well as upon his experience and familiarity with the law. (<i>In re Robert H.</i> (1978) 78 Cal.App.3d 894.) Similarly, the decision whether to seal a minor’s records is based on a totality of the circumstances surrounding whether the child has been rehabilitated. (<i>In re J.W.</i> (2015) 236 Cal.App.4th 663.) We recommend that language to this effect be included in the rule.</p> <p>Suggested language for (b) Criteria to consider (§ 707):</p> <p>Following receipt of the probation officer’s report and any other relevant evidence, the court may find that order that the child is not a fit and proper subject to be dealt with under juvenile court law <u>be transferred to the jurisdiction of the criminal court if the court finds:</u></p> <p>(1) The child was 16 years or older at the time of the alleged <u>felony</u> offense, and <u>or the child was 14 or 15 years at the time of an alleged offense listed in section 707(b); and</u></p> <p>(2) The child would not be amenable to the care, treatment, and training program available through facilities of the juvenile court, should</p>	

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		<p>be transferred to the jurisdiction of the criminal court based on an evaluation of all of the following criteria:</p> <p>(A) The degree of criminal sophistication exhibited by the child; (707(a)(2)(A)). <i>This includes, but is not limited to, the child's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the child's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the child's actions, and the effect of the child's family and community environment and childhood trauma on the child's criminal sophistication;</i></p> <p>(B) Whether the child can be rehabilitated before the expiration of <i>the juvenile court's</i> jurisdiction; (707(a)(2)(B)). <i>This includes, but is not limited to, the child's potential to grow and mature.</i></p> <p>(C) The child's previous delinquent history; (707(a)(2)(C)). <i>This includes but is not limited to the seriousness of the child's previous delinquent history and the effect of the child's family and community environment and childhood trauma on the child's previous delinquent behavior.</i></p>	

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			<p>(D) Success <u>The results</u> of previous attempts by the court to rehabilitate the child: <i>(707(a)(2)(D)).</i> <i>This includes, but is not limited to, the adequacy of the services previously provided to address the child's needs; and</i></p> <p>(E) The circumstances and gravity of the alleged offense. <u>alleged in the petition to have been committed by the child. (707(a)(2)(E)).</u> <i>This includes, but is not limited to, the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development.</i></p> <p>Suggested language for (c):</p> <p>(c) Findings under section 707(a)(1)(2)</p> <p>The findings must be stated in the order: (1) Finding of fitness The court may find the child to be fit and state that finding. (2) Finding of unfitness If the court determines the child is unfit, the court must find that: (A) The child was 16 years or older at the time of the alleged offense; and (B) The child would not be amenable to the care, treatment, and training program available</p>	

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			<p>through the juvenile court because of one or a combination of more than one of the criteria listed in (b)(2).</p> <p><u>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 upon the minutes. <i>The court's decision shall be based upon a totality of the circumstances, including the factors specified in Section 707(a)(2)A-E.</i></u></p> <p>Rule 5.772. Conduct of fitness hearings under 707(a)(2) and 707(c).</p> <p>Recommendation:</p> <p>We agree that most of this rule can be repealed because it has been changed by Proposition 57 or is covered elsewhere in the proposed rules, but the rules should retain a provision on prima facie showings. Even though <i>Edsel P. v. Superior Court</i> (1985) 165 Cal.App.3d 763, the case previously used to justify prima facie showings prior to fitness hearings, was based on the now defunct presumption of unfitness, youth facing transfer still retain a constitutional right to a prima facie showing that they committed the alleged offense.</p> <p>The U.S. Department of Justice has recently recognized the need for probable cause hearings</p>	<p>The committee agrees that the right to a prima facie finding that the alleged offense is an offense that is eligible for transfer of jurisdiction is a burden the prosecuting agency should bear before the court holds the transfer hearing and has taken the existing language from rule 5.772(b) and added it rule 5.766.</p>

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			<p>prior to transfer as a matter of Fourteenth Amendment Due Process:</p> <p>The need for adversarial testing of probable cause lies in the Kent Court’s recognition that “there is no place in our system of law for reaching a result of such tremendous consequences without ceremony.” Kent, 383 U.S. at 554, as well as in principles of fundamental fairness. When a child is certified to be criminally tried in the adult court system, he or she suffers immediate harms even if the charges ultimately are dismissed. These harms include, among others, transfer to an adult jail, in which children suffer substantially higher rates of abuse and suicide than occur in juvenile facilities; elimination of the confidentiality protections that attach to juvenile proceedings and the concomitant stigmatization of a criminal charge; exposure to harsher disciplinary policies, including prolonged periods of isolation; and removal from educational and other programs that are available in juvenile detention centers but not offered in adult facilities.” (U.S. Department of Justice, Civil Rights Division, <i>Investigation of the St. Louis County Family Court</i> (July 31, 2015), pages 26-28.)</p> <p>Moreover, the right to a full hearing on probable cause was already a right in California under <i>In re Dennis H.</i> (1971) 19 Cal.App.3d 350.</p>	

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			<p>Suggested language on prima facie showing:</p> <p><u><i>Rule 5.772. Prima facie showing.</i></u></p> <p><u><i>On the child's motion, the court must determine whether a prima facie showing has been made that the child committed the offense alleged as a basis for transfer in the motion for transfer.</i></u></p> <p><u>Form for Juvenile Transfer to Criminal Court Jurisdiction Order (JV-710)</u></p> <p>Suggested Changes (following the numbers on the form):</p> <ol style="list-style-type: none">1. No changes suggested.2. Should provide space as ask the court to describe the other relevant evidence considered.3. The check boxes for the five criteria should be deleted because there is no longer a requirement in law that the child be found unfit on each of the five criteria. Moreover, each of the five criteria has a series of component elements which are not reflected on the form. Instead, the law contemplates a totality of the circumstance approach. We suggest leaving a modified version of the first sentence: "The court has considered each of the following criteria <u>set forth in Section</u>	<p>The committee adapted the existing language from rule 5.772(b) and placed that provision in rule 5.766(c).</p> <p>No response required.</p> <p>That information will be in the court record, and does not need to be on the form.</p> <p>The committee has reworked the form to delete the criteria and the check boxes and instead refer to the statute and require the reasons to be stated on the record.</p>

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			<p><u>707(a)(2)(A-E)</u> and has determined that <u>the prosecutor has shown by a preponderance of the evidence</u> youth should be transferred to the jurisdiction of the criminal court.”</p> <p>4. Consider using language consistent with the statute, for example, “16 years old or older,” and “14 or 15 years of age.”</p> <p>5. We suggest just saying, “The motion for transfer is denied.”</p> <p><u>Form for Extraordinary Writ- Juvenile Transfer (JV824)</u></p> <p>For the reasons stated in our responses to specific questions above, we do not believe this form should be promulgated.</p>	<p>The committee has adopted this suggestion.</p> <p>This item has been clarified to include denial of the order.</p> <p>The committee agrees and has removed the JV-824 from the proposal and amended rule 5.770 to include a requirement that the parties be advised of their rights to have the court’s decision reviewed.</p>
	P. N. Gaspar Schwartz	NI	<p>California leaders should protect juveniles from overzealous state prosecutors who have no real solutions to offer the family in state.</p> <p>Putting juveniles in jail is not the solution. The state prosecutor is guilty of misconduct if he believes that children should be put away forever for carrying firearms or knives. If you are going to keep putting children inside prison with gang members, then that makes the new entrant, who is the juvenile, they must now become either more violent to make the many other persons not physically assault, deprive</p>	<p>No response required.</p> <p>No response required.</p>

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			<p>them of rehabilitation, etc.</p> <p>If state prosecutors are scared, honestly scared, to tour the state detention facilities without having the detainees placed on lockdown in any state detention, then you need not call the state detention system a "rehabilitation system". We inspect federal detention facilities and without putting the facility on lockdown. Stop being scared to fire union workers who do not want prisoners rehabilitated. Guards need high detention numbers and a violent environment inside the facility to make the courts believe that detention guards' need a high wage payment.</p> <p>*The commentator then provided comments suggesting religious education for all that is not germane to this proposal {Train, educate your grade, and junior, and high school and adults, that Jezus said, "Why callest thou me good? There is none good but one, that is, God: but if thou wilt enter into life, keep the commandments. Thou shalt not bear false witness, honor with care thy father and thy mother, do not lust after another's spouse, forgive, and love thy neighbor as thyself." Gospel Jezus Khrist Tablets}</p>	<p>No response required.</p> <p>No response required</p>
	Eric Schweitzer	N/I	I have a concern about the proposed revocation of Rule 5.772 in its entirety. Perhaps, subdivision (b) should be kept in some form.	The committee agrees that the right to a prima facie finding that the alleged offense is an offense that is eligible for transfer of jurisdiction is a

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			<p>Using the new language "transfer" rather than the old language "fitness is a distinction without a difference, when it comes to the constitutional aspects of having a contested detention hearing for its intended purpose.</p> <p>"Because the issues of probable cause and fitness are discrete, and because section 707 addresses only the latter issue, the statute must be interpreted as leaving intact the constitutional and statutory requirement that evidence of the prima facie case be presented when the minor challenges the sufficiency of the evidence to constitute probable cause. Elimination of this requirement, it deserves to be pointed out, would in effect permit prosecutors rather than judges to determine whether evidence is sufficient to constitute probable cause at a critical stage in the proceedings." Edsel P. v. Superior Court (1985) 165 Cal. App. 3d 763, 784.</p> <p>Unless the prima facie showing rule is retained, then, even if a minor should prevail at his or her rule 5.762(c) detention re-hearing, the District Attorney would still be able to proceed with transfer out proceedings based upon hearsay and conclusions based thereon. And, the minor who wins his or her detention re-hearing would probably not be released! Given the fact that many courts are ignoring W.I.C. Section 604(d) and applying W.I.C. Section 604's enabling of</p>	<p>burden the prosecuting agency should bear before the court holds the transfer hearing and has adapted the existing language from rule 5.772(b) and added it rule 5.766(c).</p>

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			<p>the "suspending adult proceedings" on Prop. 57 returnees, the incentive for a second bite at the apple while the un-detained child languishes on high bail in the "suspended" adult proceeding is great indeed.</p> <p>Furthermore, any minor treated thusly would have to hazard and appear in adult court to gain any comparable (Preliminary) hearing at a later date. And, given the changes to the law, it is questionable whether such a minor would have the opportunity to return to the protections of the Juvenile Court, even though the premise for his or her removal [felony or 707(b) offense] turns out to be absent any probable cause. This is simply untenable.</p>	
	Superior Court of Los Angeles County Los Angeles County Superior Court	AM	<p>Proposed Modifications:</p> <p>Rule 5.766 (a) - second sentence change “make a motion” to “file a motion.”</p> <p>To avoid confusion put new (a) (2) before (a) (1). Change “the” to “any” in new (a) (2):</p> <p>(1) The child was 14 years or older at the time of the alleged offense listed in section 707(b).</p> <p>(2) The child was 16 years or older at the time of <u>any</u> alleged felony offense.</p> <p>Rule 5.766 (c)</p> <p>First sentence delete “the issue of” and change “...before the jurisdiction hearing begins.” to “...before the court commences a jurisdiction</p>	<p>The committee has adopted many of these clarifying suggestions, but retained the word “make” consistent with section 707.</p> <p>The committee has adopted these clarifying suggestions.</p>

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			hearing under WIC 702.” Second sentence after “Absent a continuance” add “based on a finding of good cause per WIC 682...” Rule 5.768 (a) Second sentence change “must” to “shall” and delete “including information regarding all” and start a new sentence “ <u>The report shall address each of the criteria in section 707(a) (2).</u> ” Last sentence change “may” to “shall.” Rule 5.770 (a) First sentence change “...the child should be transferred to criminal court jurisdiction...” to “...there should be a transfer of jurisdiction to criminal court jurisdiction...” Rule 5.770 (b) First sentence change “...may order that the child be transferred to the jurisdiction of the criminal court...” to “...shall decide whether the minor should be transferred from juvenile court to a court of criminal jurisdiction...” First sentence add after “...alleged felony offense,” add “ <u>or alleged offense listed in section 707(b).</u> ...” Rule 5.770 new (f) First sentence delete “order a” and “of” to read “...of the court’s decision not to transfer	The Judicial Council style manual directs that rules of court use “must” and not “shall” for clarity. The committee has deleted the last sentence because it does not reflect section 707. The committee has adopted this clarifying change. The committee was concerned that adding this language might imply that 707(b) non-felonies were eligible for transfer and so has clarified by reversing the order to begin with the younger eligibility and added felony to that sentence. The committee has adopted this suggestion.

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			jurisdiction <u>to the criminal court</u> will be sought...”	
			Rule 5.770 new (g) After “...transfer jurisdiction” add “to the criminal court...”	The committee has adopted this suggestion.
			Form JV-710 Item 3 first box - Delete “based on” and change to read “The court has considered each of the criteria <u>listed below</u> and has determined that the youth should be transferred to the jurisdiction of the criminal court.” There should not be check boxes for a through e.	The committee has reworked the form to delete the criteria and the check boxes and instead refer to the statute and require the reasons to be stated on the record.
			Item 4. a. - After “offense” add “or offense listed in WIC 707(b)...”	The committee does not find that language clarifying as all 707(b) offenses are felonies for transfer purposes.
			Item 5. b. 2. - To “is dismissed” add “without prejudice.”	The committee has added this qualification.
			Item 5. b. 5. - add under “to the custody of:” two more boxes “the sheriff” and “or juvenile hall.”	The form already allows for specifying the detention location and has room to specify custody.
			Request for Specific Comments: Does the proposal appropriately address the stated purpose? Yes	No response required.
			Will the proposed new writ form improve the	Based on other comments, the committee has removed the JV-824 from the proposal and

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			process for challenging transfer orders? Yes	amended rule 5.770 to include a requirement that the parties be advised of their rights to have the court's decision reviewed.
			Does the revised JV-710 order form allow the court to accurately and comprehensively document its findings and orders? Yes	No response required.
			Should the date for repeal of rule 4.510, which implements the reverse remand procedure in Penal Code section 1170.17 be delayed beyond September 1, 2017 to accommodate cases that precede the enactment of Prop. 57? If so, what should be the effective date of the repeal? Our recommendation is to keep it in effect until the legislature repeals Pen Code section 1170.17.	The committee concurs, and has opted not to repeal rule 4.510 as long as Penal Code section 1170.17 remains in the law.
			Cost and Implementation Matters: Staff training for both clerical/management and judicial assistants in juvenile operations is required. The Los Angeles Superior Court employs over 600 judicial assistant who could potentially need approximately 2 hours of training. There are approximately 48 clerical/management staff court-wide who will also require training. The training time for clerical/management staff is approximately 1 hour. Processes and procedures need to be updated and the estimated time to perform this work is	The committee has taken note of the workload impacts of Proposition 57 and has reported them to the Judicial Council.

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			approximately 80 hours. In addition, minute orders, forms and docket code information must be changed in the case management system.	
	Superior Court of Orange County, Family and Juvenile Orange County Court Managers	N/I	<p>Juvenile Transfer to Criminal Court Jurisdiction Order (JV-710):</p> <p><input type="checkbox"/> Section 3 and 5(b) both indicate the youth should be transferred to the jurisdiction of criminal court. We recommend combining these sections.</p> <p><input type="checkbox"/> In section 5(b), we recommend revising the form to include, the youth is ordered to appear for arraignment in criminal court on: hearing (date), time and department.</p> <p><input type="checkbox"/> In section 5(b)(2), we recommend revising the sentence to read, the petition filed on (date) will be dismissed upon the filing of a complaint in criminal court.</p> <p>Rule 5.768 - Report of probation officer</p> <p><input type="checkbox"/> Proposed rule 5.768(a)(5), mentions the term fitness. We recommend replacing fitness with transfer.</p> <p>Rule 5.770 – Conduct of transfer of jurisdiction hearing under section 707</p> <p><input type="checkbox"/> Proposed rule 5.770(e)(2), requires the</p>	<p>The committee has reworked the form to delete the criteria and the check boxes and instead refer to the statute and require the reasons to be stated on the record.</p> <p>The committee has added space to specify an appearance date.</p> <p>This item has been revised to provide that dismissal occurs on the appearance date in criminal court.</p> <p>The committee has deleted this provision from the rule because it does not reflect section 707.</p> <p>Absent statutory guidance, the committee does</p>

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			<p>court to dismiss the petition without prejudice if the court finds the child should be transferred to the jurisdiction of criminal court. What if the prosecuting agency does not file a complaint in adult court? If the petition is dismissed and the youth is released, how would the court retain jurisdiction if the youth failed to appear in criminal court? We recommend specifying a timeframe for which the prosecuting agency is required to file a complaint in criminal court and dismissing the petition upon confirmation of the complaint being filed.</p> <p>In the Implementation Requirements, Costs, and Operational Impacts section located on page 4, the paragraph references that because Prop. 57 significantly simplified what the court must consider when determining whether to order a transfer, these proceedings may be shorter, and the court may need less time to make its findings and orders. Since Prop. 57 became effective, we have received lengthy time estimates (multiple days) Transfer Hearings. Also, our local District Attorney direct filed all eligible cases to adult court prior to implementation of this proposition. Since the implementation, there has been a substantial increase in workload and an increase in time spent on these cases due to their complexity.</p>	<p>not believe it can order a timeframe for filing of the criminal complaint, but has revised the rule to require the setting of an appearance date in criminal court and dismissal of the petition on that date.</p> <p>The committee has taken note of the workload impacts of Proposition 57 and has reported them to the Judicial Council.</p>
	Superior Court of Orange County, Juvenile Court	N/I	Comment No. 1: Implementation Requirements, Costs and Operational Impacts:	The committee has taken note of the workload

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	Hon. Maria D. Hernandez Presiding Judge, Juvenile Court		<p>Summary: We believe that the amendments to WIC 707 will result in a significant workload increase associated with the additional time that will be required to hear and decide a motion to transfer a youth to criminal court.</p> <p>The Invitation to Comment memorandum, at page four, states: “Because Prop. 57 significantly simplified what the court must consider when determining whether to order a transfer, these proceedings may be shorter, and the court may need less time to make its findings and orders.” (Emphasis added.) We strongly disagree with this statement.</p> <p>Based upon the information we have gleaned in the three and one half months since the enactment of Prop. 57 and our analysis of the statutory amendments themselves, we believe that hearings on motions to transfer, pursuant to amended section 707(a)(2), will be longer and more complex than proceedings under the old statutory scheme. Consequently, we believe that (in addition to Comment No. 2, below) there will be a significant workload increase associated with the additional time that will be required to decide a motion to transfer.</p> <p>In our view, the statutory amendments did not simplify the judicial decision-making process, they made it more difficult, because of the deletion of the former statutory presumptions that in the past often governed the outcome of the former fitness hearings. Under the former statutory scheme, for youth that came under</p>	impacts of Proposition 57 and has reported them to the Judicial Council.

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			<p>former section 707(a)(2) and section 707(c) (16 years of age or older with two prior felony offenses or 14 years of age or older committing a 707(b) listed offense), the youth was presumed to be unfit and the burden was on the youth to show that he or she was fit to be dealt with under the juvenile law, and the court had to find the youth fit under “each and every criterion” listed in subdivision (c)(5). (California Rules of Court, Rule 5.772(a) and (f).) Under the old law, the outcome of the hearing was often pre-ordained from the start, because of the youth’s inability to rebut each and every criteria. The decision-making task for the judge was relatively straightforward – did the youth fail to rebut the presumption as to even one of the criteria? If so, then the court was required to make a finding of unfitness. Now, under the new law, the court must still consider each of the five criteria, but there are no presumptions dictating the judicial decision. The import of this change is that the petitioner and youth are free to offer more or less evidence on each of the five criteria. In the end, the parties will be able to argue that “in balance” or based upon the “totality of the evidence viewed as a whole”, the youth should be transferred to criminal court or kept in juvenile court. Inasmuch as the new statute provides no priority or weight to be given each of the criteria, or no sense as to the recipe for mixing these five ingredients, it is left wholly to the judge’s</p>	

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			<p>discretion to weight the evidence against the criteria and make a decision. While this task is the classical job of a trial judge, it does require more thought and weighing, as compared to the more mechanical application of former Rule 5.772.</p> <p>In Orange County, our Public Defenders office, Alternative Public Defenders and sophisticated defense counsel have realized the implications of the new statute. For cases that they believed were hopeless in the past, because the burden was on them to rebut each and every criteria, they now believe that they have a substantially greater chance of keeping the case in juvenile court. For instance, if defense counsel represent a youth who was personally involved in committing a serious and violent offense, but they have substantial evidence that the youth has no prior delinquency history, and who can be rehabilitated, they have every reason to believe that the case may remain in juvenile court, as compared to under the old law when the gravity of the offense alone would control the outcome.</p> <p>Compounding defense counsel's belief of greater odds of keeping a case in juvenile court is their recognition that the amount of custodial time that their clients may face for a juvenile court conviction is significantly different than a criminal court conviction – measured in terms of years versus decades.</p> <p>Consequently, defense counsel view the 707</p>	

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	Commentator	Position	Comment	Committee Response
			<p>transfer motion hearing as the critical hearing and are devoting considerable resources to marshal evidence to present. More than one attorney has likened their preparation to preparing for the penalty phase of a capital murder case. We expect to receive expert witness testimony, mental health information, education history, family and other character testimony, and child welfare testimony. Consequently, we have been receiving multiple day time estimates for transfer hearings that previously may have been completed in one or two afternoons, and decided only on the probation report.</p> <p>Comment No. 2: Implementation Requirements, Costs and Operational Impacts: Summary: For some counties, such as Orange County, where the policy of the District Attorney was to directly file virtually all eligible cases in criminal court, the implementation of Prop. 57 will result in a marked increase in workload for the juvenile court. Statewide, under the old law, direct file practices by district attorneys varied widely from county to county. For some (San Diego), directly filing cases in criminal court was a relatively rare occurrence, and for others (Orange County) directly filing cases was the rule not the exception. For those counties in the latter category, the passage of Proposition 57 has, and will into the future, significantly</p>	<p>The committee has noted to the council in its report that there will be a substantial increase in the number of transfer hearings in some courts.</p>

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	Commentator	Position	Comment	Committee Response
			<p>increase the workload these county’s juvenile courts will have to bear, in two respects. First, for counties where direct filing cases was the rule and not the exception, the juvenile courts in those counties are experiencing an immediate influx of currently pending cases sent by criminal courts for section 707 transfer hearings.¹ This can be a significant “bubble” of cases. In Orange County there were approximately 100 cases pending in criminal court when Proposition 57 was passed which are in the process of being sent to juvenile court for transfer hearings. Accommodating these cases, with their expected multiple day transfer hearings into the existing case load, will greatly strain our existing resources.</p> <p>Secondly, in addition to addressing the bubble of pending direct file cases, eliminating the ability of the prosecution to direct file cases, into the foreseeable future, will result in an increased workload for the juvenile court, by virtue of the reality that all section 707(b) offenses will now be filed in juvenile court rather than directly into criminal court. Not only will the sheer numbers of cases filed increase, but because of the complexity of the crimes that fall under section 707(b), these cases will require an exponentially greater time investment on the part of the juvenile court.</p> <p>Comment No. 3: Implementation Requirements, Costs and Operational Impacts:</p>	<p>The committee has shared this comment with Judicial Council staff who work on the workload</p>

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	Commentator	Position	Comment	Committee Response
			<p>Summary: the resource allocation implications of the increased workload for juvenile courts should be studied and addressed by individual courts and the Judicial Council.</p> <p>As our Comments No. 1 and 2 seek to point out, Proposition 57 will result in an increased future workload for juvenile courts, because of the sum of: (1) the increased time to needed to hear section 707 transfer motions; plus (2) processing the “bubble” of existing pending cases in criminal court being sent to juvenile court; plus (3) the increased number of 707(b) cases filed in juvenile court; plus (4) the time needed to process these complex cases (depending upon the pre-Prop 57 direct filing practices of each county). This increased workload will have resource allocation implications that Presiding Judges and Presiding Judges of Juvenile Court will have to confront, on a county by county basis. For instance, in Orange County, the JPJ has received the commitment from the PJ to call upon former juvenile court judges, who have moved on to different assignments, to act as safety valves and hear 707 transfer motions on the 100 cases that are being sent from adult court. Certainly this means that the work of these judges on their current assignments will suffer as a result. Perhaps more importantly, we believe that the Judicial Council should view any pre-Prop 57 resource allocation study models for juvenile courts with a note of caution. While we believe</p>	<p>methodology and included this feedback in its report to the council.</p>

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	Commentator	Position	Comment	Committee Response
			that all juvenile courts will experience an increase in workload, the actual increase will vary from county to county depending upon each county’s historical practices for prosecuting section 707(b) crimes.	
			Comment No. 4: Proposed Rule 5.765: Subparagraph (a)(5) should delete the word “fitness” and substitute the word “transfer”.	The committee has deleted this provision from the rule.
			Comment No. 5: Proposed Rule 5.766 – Time of transfer hearing: The title for proposed subparagraph (c) should be changed to “Time of transfer of jurisdiction hearing”, substituting for the term “fitness” in the current proposed title.	The committee has made this change.
			Comment No. 6: Proposed Rule 5.770 – Time for Setting Jurisdiction Hearing: Proposed subparagraph (e)(1) provides that if a youth is retained in juvenile court the jurisdiction hearing is to be set pursuant to Rule 5.774. We recommend that when there has been a waiver and/or continuance of the time for jurisdictional hearing under rule 5.774, and the transfer hearing has been conducted beyond 30 calendar days or 15 judicial days, proposed Rule 5.770(e)(1) should expressly state that the jurisdiction hearing is to be set within 30 calendar days (non-detained) or 15 judicial days (detained) from the date of the order denying	The committee has clarified this rule to articulate that absent a continuance or waiver under rule 5.776, the jurisdiction hearing is subject to the timelines in 5.774.

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	Commentator	Position	Comment	Committee Response
			<p>the transfer motion.</p> <p>We believe that Rule 5.774, subparagraph (c), correctly requires that the transfer hearing and the jurisdictional hearing, occur within the 30/15 day limitations of Rule 5.774. However, there is not a rule controlling when the jurisdiction hearing is to be set after the transfer hearing, in the circumstance when there has been an initial time waiver and/or continuance beyond the 30/15 day time limitation. The proposed Rule 5.770, subparagraph (e), provides no guidance for this situation, because by its referring to Rule 5.774 the reference is to events that have long past. An analogous situation can arise when a defendant in a criminal case withdraws a general time waiver. In that circumstance, Penal Code, section 1382(a), guides the setting of the trial. In juvenile cases similar provisions appear not to exist. We recommend, at least in the case of the juvenile court's retention of jurisdiction after a transfer hearing, that the rules provide time limitations.</p> <p>Comment No. 7: Proposed Rule 5.770 – Date to Appear in Criminal Court: In the event that a transfer motion is granted, proposed subparagraph (e)(2) should provide: (1) for setting a date for the youth to appear in criminal court; (2) a date in which a criminal complaint is to be filed; and (3) an order for the youth to appear on the date, time and location</p>	<p>Absent statutory guidance, the committee does not believe it can order a timeframe for filing of the criminal complaint, but has revised the rule to require the setting of an appearance date in criminal court and dismissal of the petition on that date.</p>

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			<p>set.</p> <p>Requiring the prosecution to file an action in criminal court within a fixed period of time avoids potential due process and speedy trial related issues. Without a fixed period of time and/or date to file, it is conceivable that a youth may “fall between the cracks” of the district attorney’s juvenile prosecution and adult prosecution units. Days or weeks may pass while the youth languishes in custody awaiting the commencement of the adult criminal matter. In the case of an adult defendant being held to answer after preliminary examination, Penal Code, section 1382(a)(1), prevents this type of situation occurring by requiring the information be filed within 15 days. The provisions governing the transfer of cases from juvenile court to criminal court should provide for similar safeguards.</p> <p>Further, there are practical reasons for setting a date to appear and ordering the youth’s appearance. First, under the proposed rule, the juvenile court sets bail when a transfer motion is granted. Without an order to appear, the youth will not be able to be released on bail, because a date, time and location to appear is required for bail forfeiture. (Penal Code, section 1269b(h).) Secondly, if a youth is released from custody, either on bail or on own-recognizance, and fails to appear, there is no basis to issue a bench warrant if there was no pre-existing order to appear. Lastly, for youth that remain in</p>	

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			<p>custody, it is our experience that custodial authorities (sheriffs or probation) require a transportation order commanding them to transport the in-custody youth to the next court appearance, at the date and time set. Again, without a date to appear in criminal court, the sheriffs or probation, whoever has custody of the youth, will not know when and where to bring the youth for criminal proceedings.</p> <p>Comment No. 8: Propose Rule 5.770 – Dismissal of Petition: Proposed subparagraph (e)(2) also provides that when a transfer motion is granted, the “court must dismiss the petition without prejudice.” The rule should provide that the petition is dismissed after the appearance date in criminal court and/or the filing of the criminal court complaint. Dismissing the petition forthwith upon granting a motion to transfer a youth to criminal court, strips the court of jurisdiction at a time when the basis for adult court jurisdiction – the criminal complaint – has not been filed. Dismissing the petition may arguably place the youth in a jurisdictional limbo land, between the dismissal of the juvenile petition and the filing of the criminal complaint, putting into question under whose orders is the youth and those dealing with the youth operating under. For instance, assume that the youth is released on bail, and quickly thereafter the bond agent receives information causing the agent to want</p>	<p>The committee has revised the rule to require the setting of an appearance date in criminal court and dismissal of the petition on that date.</p>

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			to surrender the youth back to the court. (Penal Code, section 1300.) To whom should the youth be surrendered and to which court should he or she be taken? Comment No. 9: Proposed Juvenile Transfer to Criminal Court Jurisdiction Order: For the reasons set forth in Comment No. 6, paragraph 5.b. should include a date, time and location for the youth to appear in criminal court, and an order that the youth appear. Further, the paragraph should also order the district attorney to file a complaint, information or indictment on or before the appearance date. Paragraph 5.b.2. should require the setting of a date for the dismissal of the juvenile court petition, for the reasons stated in Comment No. 7.	
	Superior Court of Riverside County Susan Ryan Chief Deputy of Legal Services	N/I	The new writ form will make the process simpler for challenging transfer orders as it will assist the petitioner in preparing a writ with the required information	Based on the comments received, the committee has removed the JV-824 from the proposal and amended rule 5.770 to include a requirement that the parties be advised of their rights to have the court's decision reviewed.
	Superior Court of San Diego County Michael M. Roddy Executive Office	AM	<ul style="list-style-type: none">• Does the proposal appropriately address the stated purpose? <i>Yes.</i>• Will the proposed new writ form improve the process for challenging transfer orders? <i>Probably.</i>	No response required. Based on the comments received, the committee has removed the JV-824 from the proposal and amended rule 5.770 to include a requirement that the parties be advised of their rights to have the court's decision reviewed.

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	Commentator	Position	Comment	Committee Response
			<ul style="list-style-type: none">• Does the revised JV-710 order form allow the court to accurately and comprehensively document its findings and orders? <i>Yes</i>.• Should the date for repeal of rule 4.510, which implements the reverse remand procedure in Penal Code section 1170.17 be delayed beyond September 1, 2017 to accommodate cases that precede the enactment of Prop. 57? <i>Yes</i>. If so, what should be the effective date of the repeal? At least another year until the issue is settled in the courts. The only Court of Appeal to rule on the issue so far held that Proposition 57 does apply to cases that were filed directly in the criminal division but have not yet gone to trial. That court specifically declined to address the procedure that should be used to get the case before the juvenile court. It would be helpful to have guidance on whether certification or reverse remand or some other procedure is appropriate.• Would the proposal provide cost savings? If so, please quantify. <i>Unknown</i>.• What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures	<p>No response required.</p> <p>The committee has opted not to repeal rule 4.510 as long as Penal Code section 1170.17 remains in the law.</p> <p>The committee has taken note of the recent appellate court holding, but finds it premature to specify a procedure for cases filed prior to the enactment of Proposition 57 given the high level of legal uncertainty about which cases are and are not subject to the new statute.</p> <p>No response required.</p> <p>The committee has noted in its report to the council that implementation of Proposition 57 imposes a workload on the juvenile courts.</p>

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		<p>(please describe), changing docket codes in case management systems, or modifying case management systems. <i>Training staff (judicial officers, court clerks, back office clerks, clerical supervisors—hours of training unknown), revising procedures (requires coordination with probation departments and prosecuting agencies), and changing codes in JCMS.</i></p> <ul style="list-style-type: none"> • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? <i>Unknown.</i> • How well would this proposal work in courts of different sizes? <i>Unknown.</i> <p>Rule 4.116 • <i>Approve.</i></p> <p>Rule 5.766 (a) Hearing on Transfer of jurisdiction to criminal court hearing (§ 707) ... The prosecuting attorney may make a motion to transfer the child from juvenile court to a court of criminal jurisdiction; in one of the following circumstances:</p> <p>(c) Time of fitness hearing—rules 5.774, 5.776</p> <p>The transfer of jurisdiction hearing must be held and the court must rule on the issue of the</p>	<p>The committee has opted to make the proposal effective May 22, 2017.</p> <p>No response required.</p> <p>No response required.</p> <p>The committee has adopted these clarifying changes.</p> <p>The committee has adopted this change.</p>

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			<p>request to transfer jurisdiction before the jurisdiction hearing begins. Absent a continuance, the jurisdiction hearing must begin within the time limits under rule 5.774.</p> <p><u>Rule 5.768</u> (a) ... The probation officer must prepare and submit to the court a report on the behavioral patterns and social history of the child being considered. The report must include information relevant to the determination of whether or not 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). ...</p> <p>(5) Any other information relevant to the determination of fitness whether the child should be transferred to the jurisdiction of the criminal court.</p> <p><u>Rule 5.770</u> (b) ... (2) The child should be transferred to the jurisdiction of the criminal court based on an evaluation of all of the following criteria: listed in section 707(a)(2).</p> <p>(A) The degree of criminal sophistication exhibited by the child;</p>	<p>The committee has adopted this clarifying change.</p> <p>The committee has deleted this provision from the rule.</p> <p>The committee has clarified this subdivision in a manner similar to that suggested by this commentator.</p>

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			<p>(B) Whether the child can be rehabilitated before the expiration of jurisdiction;</p> <p>(C) The child's previous delinquent history;</p> <p>(D) The results of previous attempts by the court to rehabilitate the child; and</p> <p>(E) The circumstances and gravity of the alleged offense.</p> <p>(c) Findings under section 707(a) (d) Extenuating circumstances</p> <p>The court may consider extenuating or mitigating circumstances in the evaluation of each relevant criterion.</p> <p>(d) Extenuating circumstances Basis for order of transfer</p> <p>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 upon the minutes.</p> <p>(h) Review of determination on a motion to transfer jurisdiction to criminal court</p> <p>An order that a child should or should not be granting or denying a motion to transferred to the jurisdiction of the to criminal court is not an</p>	<p>The committee has deleted this subdivision from the rule as it reflects obsolete statutory text,</p> <p>The committee has adopted this clarifying title for this subdivision of the rule.</p> <p>The committee has adopted this stylistic revision.</p>

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			<p>appealable order. Appellate review of the order is by petition for extraordinary writ. Any petition for review of a judge’s order to transfer jurisdiction of the child, or denying an application for rehearing of the referee’s determination to transfer jurisdiction of the child, 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.</p> <p>(i) In any case in which If a hearing for transfer of jurisdiction has been noticed under section 707, the court must postpone the taking of a plea to the petition until the conclusion of the transfer hearing, and no pleas that may have been entered already may be considered as evidence at the hearing.</p> <p><u>FORM JV-600</u></p> <ul style="list-style-type: none">• <i>Approve.</i> <p><u>FORM JV-642</u></p> <ul style="list-style-type: none">• Page 3, item 36: The <input type="checkbox"/> mother <input type="checkbox"/> father <input type="checkbox"/> legal guardian is/are ordered to supply the names and contact information of adult relatives to probation so probation they can notify them be notified of the child’s removal and of their options to be included in the child's life.	<p>The committee has reorganized the rule as suggested.</p> <p>No response required.</p> <p>The committee has adopted these clarifying changes.</p>

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		<ul style="list-style-type: none"> Page 3, item 43.a.: is ordered to return to court on the above date(s) and time(s). <u>FORM JV-710</u> Page 1 – Fourth box from top of form (left side) – title of form and footer (at bottom): ORDER TO JUVENILE TRANSFER JUVENILE TO CRIMINAL COURT JURISDICTION ORDER (Welfare and Institutions Code, § 707) Page 1 – Item 3: a. the degree of criminal sophistication of exhibited by the youth for the reasons stated on the record. b. whether the youth can be rehabilitated prior to the expiration of jurisdiction for the reasons stated on the record. c. the youth's previous delinquent history for the reasons stated on the record. d. the results of previous attempts by the court to rehabilitate the youth for the reasons stated on the record. e. the circumstances and gravity of the alleged offense(s) for the reasons stated on the record. Page 1 – Item 4.b.: The youth was at least 14 years old at the time of the alleged offense, and the current alleged offense is an offense listed in Welfare and Institutions Code section 707(b). Page 1 – Item 5.a.: 	<p>The committee has changed the name of this form as suggested and reworked the findings and orders to delete the specific statutory criteria.</p> <p>The committee has adopted these clarifying changes to the form.</p>

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			<p>The youth should be is retained under the jurisdiction of the juvenile court.</p> <ul style="list-style-type: none"> Page 1 – Item 5.b.: The youth should be is transferred to the jurisdiction of the criminal court. <p><u>FORM JV-735</u></p> <ul style="list-style-type: none"> Page 1 – Item 1.a.: Insert period at end of sentence (after “602”). <p><u>FORM JV-824</u></p> <ul style="list-style-type: none"> Page 1 - Second box from top of form (left side) – title of case: Capitalize “i.” iIn re the Matter of: Page 2 – Item 8: Summary of factual basis for petition (Ppetitioner need not repeat facts as they appear in the record, but Petitioner must reference each specific portion of the record, its significance to the grounds alleged, and any disputed aspects of the record,). 	<p>The committee has clarified this order.</p> <p>The committee has clarified this order.</p> <p>The committee has adopted this technical suggestion.</p> <p>The committee has removed this form from the proposal and replaced it with a requirement for an advisement to the parties.</p>
	TCJPJAC/CEAC Joint Rules Subcommittee TCJPJAC/CEAC	AM	<p>Regarding additional training: It will take time to train and educate staff on the new procedure required by law.</p> <p>Regarding the impact on local or statewide justice partners: Without direct filing, the court may need to conduct more hearings and probation may need to prepare more reports. However, the JRS members understand that this is necessary.</p>	<p>The committee concurs that Proposition 57 will have workload impacts on the courts.</p>

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			<p>Suggested modifications:</p> <p>Regarding rule 5.766(c) – The title of subsection (c) still uses the word “fitness.” The JRS recommends replacing “fitness” with the phrase “transfer of jurisdiction.”</p> <p>Regarding rule 5.768(a) – The language in subsections (1)-(5) is not reflected in Welfare and Institutions Code § 707. The JRS recommends removing it.</p> <p>Regarding rule 5.770(b)(2)(B) – The JRS recommends adding the phrase “the juvenile court’s” between “of” and “jurisdiction” for clarity and consistency with Welfare and Institutions Code § 707. The revised language would read, “Whether the child can be rehabilitated before the expiration of <u>the juvenile court’s</u> jurisdiction;”</p> <p>Regarding Form JV-710 – The JRS recommends that the form’s title be amended to “JUVENILE COURT ORDER TO TRANSFER CASE TO CRIMINAL COURT” as the current title is not clear.</p> <p>Regarding Form JV-710, Section 3 a.-d. – The JRS recommends replacing the word “youth” with the word “minor.”</p> <p>Regarding Form JV-710, Section 5 b.2. – The JRS recommends adding the phrase “without prejudice” after the phrase “is dismissed” for</p>	<p>The committee has corrected this title.</p> <p>The committee has deleted these provisions from the rule.</p> <p>The committee has adopted this clarifying suggestion.</p> <p>The committee has clarified the title.</p> <p>The committee has adopted this suggested change.</p> <p>The committee has reworked this form and has added the qualifier “without prejudice” to the dismissal order.</p>

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			<p>clarity and consistency with Rule 5.770(e)(2). The revised language would read, “2. The petition filed on (date): is dismissed <u>without prejudice.</u>”</p> <p>Regarding Form JV-710, Section 5 – The JRS recommends that the title of Section 5 be amended to read as follows, “THE COURT FURTHERALSO FINDS AND ORDERS.”</p> <p>Regarding Form JV-710, Section 5 – The JRS recommends that “OR” be placed between options “a.” and “b.” for the purposes of clarity.</p> <p>Regarding Form JV-824, Section 4, the JRS recommends adding new boxes “c” and “d.” Specifically, the JRS recommends that new box “c” be added and that it set forth the following language, “c. ordering a transfer to juvenile court of a pending criminal case so that an order pursuant to Welfare and Institutions Code § 707 can be held.” The JRS recommends that new box “d” be added and that it set forth the following language, “d. denying transfer of a pending criminal case to juvenile court.” Existing box “c” would be converted to box “e.”</p> <p>Generally, Welfare and Institutions Code § 707 uses the term “minor” but the rules use the term “child.” The two words can have different legal meanings. The JRS recommends using the term “minor” for clarity and consistency with</p>	<p>The committee is retaining the plain language formulation of “also”.</p> <p>The committee reworked the form to better clarify the court’s findings and orders.</p> <p>The committee has removed this form from the proposal and replaced it with a requirement for an advisement to the parties.</p> <p>The standard practice of the council is to use the term child in all juvenile rules and forms and the committee has revised this proposal consistent with that practice.</p>

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Juvenile Law: Implementation of Proposition 57, the Public Safety and Rehabilitation Act of 2016 (Amend Cal. Rules of Court, rules 4.116, 5.766, 5.768, and 5.770; repeal rules 4.510 and 5.772; revise forms JV-600, JV-642, JV-710, and JV-735; approve form JV-824)

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

	Commentator	Position	Comment	Committee Response
			<p>Welfare and Institutions Code § 707.</p> <p>General Comment: The JRS members discussed how various forms and rules use “youth”, “minor”, and “child.” This can be confusing for all involved parties. The JRS asks that the Family and Juvenile Law Advisory Committee consider recommending the use of just one of these terms throughout family and juvenile law related rules and forms in the long-term or that the committee provide additional guidance on why the three different terms are still being used.</p>	<p>As explained above there is a standard formulation in the juvenile rules and forms, and it is child. The use of minor appears in forms and rules for the criminal court, and the committee has no jurisdiction over their terminology. The JV-710 used the term “youth” but for consistency with other forms, this has been changed to “child.”</p>