
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 1423 **Hearing Date:** June 18, 2019
Author: Wicks
Version: June 6, 2019
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Transfers to Juvenile Court*

HISTORY

Source: California Public Defender Association
Pacific Juvenile Defender Center

Prior Legislation: SB 1391 (Lara), Ch. 1012, Stats. 2018
SB 439 (Mitchell), Ch. 1006, Stats. 2018
Proposition 57, approved by the voters on November 8, 2016

Support: Anti-Recidivism Coalition; Children's Defense Fund- California; East Bay Community Law Center; Ella Baker Center for Human Rights; Friends Committee on Legislation of California; Juvenile Court Judges of California; MILPA; National Association of Social Workers, California Chapter; National Center for Youth Law; W. Haywood Burns Institute; Youth Law Center; an individual

Opposition: None known

Assembly Floor Vote: 51 - 10

PURPOSE

The purpose of this bill is to create a mechanism for the return of a case back to the juvenile court from the criminal court under certain circumstances.

Existing law provides, generally, that a minor who is between 12 years of age and 17 years of age, inclusive, when the minor violates any law defining a crime, is subject to the jurisdiction of the juvenile court and to adjudication as a ward. (Welf. & Inst. Code, § 602, subd. (a).)

Existing law states that in a case in which a minor is alleged to have committed any felony when the minor was 16 years of age or older, the prosecutor may make a motion to transfer the minor from juvenile court to a court of criminal jurisdiction. (Welf. & Inst. Code, § 707, subd. (a)(1).)

Existing law states that in a case in which a minor is alleged to have committed specified offenses when the minor was 14 or 15 years of age, but was not apprehended prior to the end of juvenile court jurisdiction, the prosecutor may make a motion to transfer the minor from juvenile court to a court of criminal jurisdiction. (Welf. & Inst. Code, § 707, subd. (a)(2).)

Existing law requires the court to order the probation officer to submit a report on the behavioral patterns and social history of the minor when a prosecutor makes a motion to transfer a juvenile case to adult criminal court. (Welf. & Inst. Code, § 707, subd. (a)(1).)

Existing law requires the court to consider the following criteria when deciding to transfer the case:

- The degree of criminal sophistication exhibited by the minor;
- Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction;
- The minor's previous delinquent history;
- Success of previous attempts by the juvenile court to rehabilitate the minor; and,
- The circumstances and gravity of the offense alleged in the petition to have been committed by the minor. (Welf. & Inst. Code, § 707, subd. (a)(3).)

Existing law enumerates specific serious and violent offenses which permit transfer to adult criminal court. (Welf. & Inst. Code, § 707, subd. (b).)

Existing law requires the clerk of the criminal court to report to the juvenile court when a conviction does not result. (Welf. & Inst. Code § 707.4.)

This bill provides that in any case in which a person is transferred from juvenile court to criminal court, upon conviction or entry of a plea, the person may, under specified circumstances, request the criminal court to return the case to the juvenile court for disposition.

This bill provides that upon motion by the person, the criminal court has the authority to return the case to juvenile court for disposition in the following circumstances:

- If the person is convicted at trial in criminal court solely of one or more misdemeanors, upon request by the defense, the case must be returned to juvenile court.
- If any of the allegations in the juvenile court petition that were the basis for transfer involved a Section 707 (b) felony offense, and the person is convicted at trial in criminal court only of non-Section 707 (b) felony offenses, or a combination of non-Section 707 (b) felony offenses and misdemeanors, upon request, the court has the discretion to return the case to juvenile court for further proceedings.
- If the allegations in the juvenile court petition that were the basis for transfer involved a felony, and pursuant to a plea agreement the person pleads guilty to one or more misdemeanors, or if any of the allegations in the juvenile court petition that were the basis for transfer involved a Section 707 (b) felony offense, and pursuant to a plea agreement the person pleads guilty only to one or more misdemeanors, non-Section 707 (b) felony offenses, or a combination of non-Section 707 (b) felony offenses and misdemeanors, upon agreement and request of the parties, and subject to the approval of the court, the case must be returned to juvenile court for further proceedings.

This bill requires the court in determining whether the case should be returned to juvenile court pursuant, or in determining whether to approve the agreement between the defense attorney and prosecutor that the person should be returned to juvenile court, to make a finding by a preponderance of the evidence that a juvenile disposition is in the interests of justice and the welfare of the person. Requires the court to state its finding, including the reasons for making that finding, on the minute order. Requires the court, in making the determination, to consider the transcript and minute order of the transfer hearing, the time that the person has served in custody, the dispositions and services available to the person in the juvenile court, and any relevant evidence submitted by either party.

This bill requires the court, upon determining that the case will be returned to the juvenile court, to return the entire case to the juvenile court and requires the matter to be calendared within two court days.

This bill requires the juvenile court to order the probation department to prepare a social study on the questions of the proper disposition, and the case shall proceed to disposition as set forth in existing law.

This bill requires that a conviction or guilty plea that is returned to juvenile court be considered an adjudication or admission before the juvenile court for all purposes.

This bill requires the clerk of the criminal court to report the return to juvenile court to the probation department, the law enforcement agency that arrested the minor for the offense, and the Department of Justice. Requires the clerk of the criminal court to deliver to the clerk of the juvenile court all copies of the minor's record in criminal court and to obliterate the person's name for any index maintained in the criminal court. Requires the clerk of the juvenile court to maintain the criminal court records, as provided, until such time as the juvenile court may issue an order that the records be sealed.

COMMENTS

1. Need for This Bill

According to the author:

Decisions about what charges are filed occurs very early in the case at a time when there has been little opportunity to investigate or talk to witnesses. A significant number of cases are later dismissed or the charges reduced because the information available at the early stages of the case later turns out to be inaccurate or incomplete. Under current law, once a decision is made to transfer the young person, they may not be referred back to the juvenile system. Establishing a process for a juvenile to request a criminal court to return a case to juvenile court for disposition would provide a much-needed mechanism to assure fairness for youth who did not actually commit the crimes that were the basis of transfer and would be in the interests of justice and the welfare of the individual.

2. Jurisdiction of the Juvenile Court

As a general rule, minors between the ages of 12 and 18 who commit a crime fall within the jurisdiction of the juvenile delinquency court. (Welf. & Inst. Code, § 602.) This extends to any minor alleged to have committed a crime before their 18th birthday, regardless of age at the time of arrest or commencement of proceedings. (Welf. & Inst. Code, § 603.)

Some minors may be tried as adults, depending on the age of the minor at the time of the offense and the crime charged. Minors who may be subject to transfer to adult criminal court include those alleged to have committed any felony when 16 years old or older, or 14- and 15-year-old minors who are alleged to have committed one of a list of serious or violent felonies. (Welf. & Inst. Code, § 707.)

3. The Transfer Process

Historically, a minor who was at least 16 years old and charged with a felony could be transferred to adult court if he was found to be unfit for the juvenile court. The minor was presumed unfit for juvenile court if the felony was one of those enumerated in Welfare and Institutions Code 707, subdivision (b), and presumed fit if the felony was not one of those enumerated offenses. Proposition 21, passed in 2000, amended Welfare and Institutions Code section 707 to give prosecutors the discretion to file cases against minors 14 and older, depending upon their age, alleged offense and offense history, in juvenile or adult criminal court. Proposition 21 also amended Welfare and Institutions Code section 602 to require the prosecution of minors 14 years of age or older in adult criminal court who were alleged to have committed special circumstances first-degree murder and specified sex offenses.

Proposition 57 repealed the provisions of law permitting a prosecutor to file charges against a minor directly in adult criminal court. Currently, a minor who is alleged to have committed any felony when 16 years old or older, as well as a minor who is alleged to have committed one of specified serious or violent felonies when 14 or 15 years old, may be transferred to criminal court only if the juvenile court determines that the person should be transferred. (Welf. & Inst. Code, § 707, subd. (a).)

Upon the prosecutor filing a motion to transfer the minor from juvenile court to adult criminal court, the juvenile court orders the probation officer to submit a report on the behavioral patterns and social history of the minor. In making a decision about whether to transfer a minor to adult criminal court, the court is required to consider the following criteria:

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

Welfare and Institutions Code section 707, subdivision (a), provides additional information for the court to consider when evaluating the transfer criteria. Finally, the prosecutor bears the burden of showing that a minor should be transferred to adult criminal court by a preponderance of the evidence. (Calif. Rules of Court, rule 5.770.)

4. Existing Statutory “Reverse Remand” Provisions

Prior to the passage of Proposition 57, Penal Code sections 1170.17 and 1170.19 provided a “reverse remand” process if the minor was ultimately not convicted of the crime that permitted direct filing in adult criminal court. Under this process, the adult criminal court could either itself conduct the fitness hearing or transfer the matter to the juvenile court for the hearing. Proposition 57 did not repeal the reverse remand provisions of Penal Code sections 1170.17 and 1170.19 to determine if a juvenile convicted in adult criminal court is fit for a juvenile court disposition. However, these provisions of law describe an “obsolete procedure” due to the fact that Proposition 57 eliminated direct filing and therefore, “no juvenile will be transferred to criminal court without the juvenile court first holding a hearing on the appropriateness of the transfer.” (See Judicial Council of California, *Juvenile Law: Implementation of Proposition 57, The Public Safety and Rehabilitation Act of 2016*, p. 3 <<https://www.courts.ca.gov/documents/W17-02.pdf>> [as of Jun. 12, 2019].)

5. What This Bill Does

This bill creates a mechanism for the return of a case back to the juvenile court from the criminal court under certain circumstances. Specifically, this bill provides that upon motion by the person whose case was transferred to criminal court, the criminal court has the authority to return the case to juvenile court for disposition in the following circumstances:

- If the person is convicted at trial in criminal court solely of one or more misdemeanors, the case must be returned to juvenile court if the defense requests that the case be returned to the juvenile court.
- If any of the allegations in the juvenile court petition that were the basis for transfer involved a Section 707 (b) felony offense, and the person is convicted at trial in criminal court only of non-Section 707 (b) felony offenses, or a combination of non-Section 707 (b) felony offenses and misdemeanors, the court has the discretion to return the case to juvenile court upon request.
- If the allegations in the juvenile court petition that were the basis for transfer involved a felony, and pursuant to a plea agreement the persons pleads guilty to one or more misdemeanors, or if any of the allegations in the juvenile court petition that were the basis for transfer involved a Section 707 (b) felony offense, and pursuant to a plea agreement the person pleads guilty only to one or more misdemeanors, non-Section 707 (b) felony offenses, or a combination of non-Section 707 (b) felony offenses and misdemeanors, the case must be returned to the juvenile court if the defense and prosecution agree that the case should be returned to the juvenile court, the parties request that the case is returned to the juvenile court, and the court approves the return of the case.

6. Amendment

The author intends to take the following amendment in committee:

707.5 (b)(3) If the allegations in the juvenile court petition that were the basis for transfer involved ~~a felony, only offenses not listed in subdivision (b) of Section 707, and pursuant to a plea agreement the person pleads guilty only to a misdemeanor or misdemeanors, the persons pleads guilty to one or more misdemeanors,~~ or if any of the allegations in the juvenile court petition that were the basis for transfer involved an offense listed in subdivision (b) of Section 707, and pursuant to a plea agreement the person pleads guilty only to one or more misdemeanors, felony offenses that are not listed in subdivision (b) of Section 707, or a combination of such felony offenses and misdemeanors, upon agreement and request of the parties, and subject to the approval of the court, the case shall be returned to juvenile court for further proceedings pursuant to subdivision (c).

7. Argument in Support

According to the Juvenile Court Judges of California:

AB 1423 closes a gap in California's efforts to apply adolescent developmental science to law, which includes the previous passage of SB 1391, SB 439, and Proposition 57. The United States Supreme Court and California courts have recognized that youthfulness and developmental immaturity matter in the justice system. Youth transferred for prosecution to adult court for serious charges should have the opportunity to return to juvenile court to receive treatment if the charges are found to be less serious than initially alleged. AB 1423 is consistent with California's rehabilitative approach toward young people, the purpose of the juvenile court, and the importance of considering adolescent development in sentencing decisions.

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