

SPECIAL DIRECTIVE 16-12

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: JOHN K. SPILLANE   
Chief Deputy District Attorney

SUBJECT: PROPOSITION 57: THE PUBLIC SAFETY AND REHABILITATION  
ACT OF 2016; THE PROSECUTION OF JUVENILES IN ADULT  
COURT

DATE: NOVEMBER 9, 2016

Effective immediately, this Special Directive supersedes Special Directives 02-02 and 05-05, and sets forth the policy of the Los Angeles County District Attorney's Office regarding the filing of charges against qualifying minors in adult court.

On November 8, 2016, the California electorate passed Proposition 57, also known as "The Public Safety and Rehabilitation Act of 2016" (hereafter "Prop 57"). Prop 57 added Section 32 to Article I of the California Constitution, directing that an inmate sentenced to a state prison term is eligible for parole consideration after completing the full term for his or her primary offense. Additionally, Prop 57 amended Welfare and Institutions Code (WIC) sections 602 and 707, revising operative language and eliminating direct mandatory, and discretionary filings of juvenile cases in the superior court. Effective immediately,<sup>1</sup> judicial officers are responsible for deciding whether a case charged against a juvenile should be transferred to an adult criminal court.

**Effect on State Prison Sentences**

Pursuant to Prop 57, a person whose current conviction is a "non-violent felony offense"<sup>2</sup> and who is sentenced to state prison will be eligible for parole consideration "after completing the full term for his or her primary offense." (Calif. Const., Art. 1, § 32, subd. (a)(1).) More specifically, affected inmates will be eligible for release from state prison after serving "the longest term of imprisonment imposed by the court for any offense," excluding enhancements, consecutive sentences that may have been imposed on other charges, and alternative sentences. (Calif. Const., Art. 1, § 32, subd. (a)(1)(A).) This amendment to the California Constitution affects inmates who are currently serving a prison term as well as those who are sentenced to a state prison term in the future.

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<sup>1</sup> "An initiative statute or referendum approved by a majority of the votes thereon takes effect the day after the election unless the measure provides otherwise." (Calif. Const., Art. 2, § 10, subd. (a).)

<sup>2</sup> Although the term, "non-violent felony offense," is not defined in Prop 57, principles of statutory interpretation suggest that, within the meaning of this ballot initiative, a "non-violent felony offense" is an offense that is not enumerated as a violent felony in Penal Code section 667.5, subdivision (c).

Other than when an enhancement converts a non-violent felony offense to a violent felony,<sup>3</sup> allegations regarding a defendant's conduct or criminal history do not appear to be relevant to a determination of when an inmate whose current commitment offense is not a violent felony is eligible for parole consideration.<sup>4</sup> Similarly, consecutive terms imposed for subordinate offenses do not appear to affect an inmate's eligibility for parole consideration.

However, pled and proven enhancements and secondary offenses are expected to be important considerations as to whether an inmate is a suitable candidate for parole release. As such, deputies are directed to continue to abide by all provisions in the Legal Policies Manual relevant to the handling and settlement of felony cases.

### **Effect on Juvenile Justice**

Prop 57 also invalidated WIC section 602, subdivision (b), which mandated that juveniles be prosecuted in adult court for specified crimes, and amended WIC section 707, subdivision (d), which provided prosecutors with the discretion to file certain charges against juveniles in an adult criminal court. As a result, the state's ability to file charges against qualifying minors directly in adult court has been eliminated. Additionally, WIC section 707, subdivisions (a) and (b), have been amended to eliminate the phrases, "fitness," "fit," and "unfit."

Effective immediately, only juvenile offices may consider filing charges in cases in which a minor is accused of a crime. Accordingly, in any case where a person under the age of 18 is accused of a crime, and law enforcement is seeking charges, the case must be presented to the appropriate Juvenile Division Office for filing consideration.

In order to charge a minor in adult court,<sup>5</sup> the prosecution must now make a "Motion to Transfer Minor from Juvenile Court to a Court of Criminal Jurisdiction" in the appropriate juvenile court.<sup>6</sup> (WIC, § 707, subd. (a).) The approval of the Head Deputy of the Juvenile Division is required to authorize a Motion to Transfer. The Head Deputy shall consider the following factors:

- Degree of criminal sophistication exhibited by the minor

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<sup>3</sup> Pled and proven conduct enhancements that will cause an offense to become a violent felony offense include infliction of great bodily injury pursuant to Penal Code sections 12022.7, 12022.8, or 12022.9 (Pen. Code, § 667.5, subd. (c)(8)), use of a firearm pursuant to Penal Code sections 12022.3, 12022.5, 12022.53, or 12022.55 (Pen. Code, § 667.5, subds. (c)(8), (c)(22)), and gang enhancements pursuant to Penal Code section 186.22 when the charged felony offense is Penal Code section 518 [extortion] or Penal Code section 136.1 [intimidating a witness] (Pen. Code, § 667.5, subds. (c)(19), (c)(20)).

<sup>4</sup> Prop 57 provides that the Department of Corrections and Rehabilitation has the authority to award credits to inmates for good behavior and for approved rehabilitative or educational achievements and to create regulations in furtherance thereof. (Calif. Const., Art. 1, § 32, subds. (a)(2), (b).)

<sup>5</sup> If the minor was 16 or 17 years of age when the offense was committed, the alleged violation must be a felony offense in order to transfer the minor to an adult criminal court. (WIC, § 707, subd. (a)(1).) If the minor was 14 or 15 years of age at the time of the offense, the minor may only be transferred to an adult criminal court if he or she is alleged to have committed an offense listed in WIC section 707, subdivision (b). (*Ibid.*)

<sup>6</sup> A template for this motion is forthcoming, will be located on LADANET under BUREAUS>BUREAU OF SPECIALIZED PROSECUTIONS-JUVENILE > POLICIES, and will be distributed within the Juvenile Division. In the interim, contact Head Deputy Shawn N. Randolph for questions.

- 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
- The circumstances and gravity of the offense alleged in the petition to have been committed by the minor
- Existence of a companion adult defendant
- Any special consideration for victims and witnesses

The first five factors listed above are based on the statutory criteria set forth in WIC, section 707, subdivision (a)(2). The last two factors represent additional significant considerations that might warrant transfer of the minor from juvenile court to a court of criminal jurisdiction. If the Juvenile Division Head Deputy determines that a Motion to Transfer is appropriate, he/she shall consult with the Head Deputy of the office responsible for prosecution in adult court. See the soon-to-be published 2017 version of the LPM sections 3.03, 3.03.01, and 3.04 for crime charging and procedures.

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