


SPECIAL DIRECTIVE 16-15

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: JOHN K. SPILLANE 
Chief Deputy District Attorney

SUBJECT: PROPOSITION 57: TRANSFER HEARINGS FOR JUVENILES
DIRECTLY CHARGED IN ADULT COURT

DATE: NOVEMBER 29, 2016

This Special Directive is an addendum to Special Directive 16-12. It sets forth the policy of the Los Angeles County District Attorney's Office (LADA) regarding juveniles whose cases were filed directly in adult court prior to November 9, 2016, when the "Public Safety and Rehabilitation Act of 2016" (Prop 57) became effective. Under Prop 57, which amended Welfare and Institutions Code (WIC) section 707, subdivision (a), the prosecution must make a "Motion to Transfer Minor from Juvenile Court to a Court of Criminal Jurisdiction" in order to charge a minor in an adult court.¹

It shall be the policy of the LADA that a defendant who was a minor on the date of the alleged offense and is the subject of a directly filed case in which jeopardy has not yet attached² will be provided an opportunity to have the juvenile court determine whether he or she should be transferred to a court of criminal jurisdiction (adult court).³ If the defendant elects to waive a transfer hearing (formerly known as a fitness hearing) and remain in adult court, a personal waiver must be taken on the record. (*People v. Level* (2002) 97 Cal.App.4th 1208, 1212-1213 [right to a juvenile disposition may be waived].)

If the juvenile defendant requests a transfer hearing, the case is to be certified to the appropriate juvenile court to conduct the hearing. The adult court should not dismiss the case against the juvenile defendant. Rather, the adult court is to suspend criminal proceedings against the juvenile pending a final determination as to the motion to transfer the case to adult court.

¹ 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 when the offense was committed, the alleged violation must be an offense listed in section 707, subdivision (b), of the Welfare and Institutions Code. (*Ibid.*)

² Deputies should oppose a juvenile defendant's request for a transfer hearing in cases in which the trial in adult court has occurred, the defendant was convicted, and he or she is awaiting sentencing, or in which the trial has begun. Under all these circumstances, jeopardy has attached.

³ In determining whether a minor should be transferred to a court of criminal jurisdiction, the juvenile court must consider the following criteria: (A) the degree of criminal sophistication exhibited by the minor; (B) whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction; (C) the minor's previous delinquent history; (D) success of previous attempts by the juvenile court to rehabilitate the minor; and (E) the circumstances and gravity of the offense alleged in the petition to have been committed by the minor. (WIC, § 707, subd. (a)(2).)

When a juvenile defendant pending preliminary hearing or trial in adult court requests a transfer hearing, the assigned deputy is to file a motion in adult court seeking certification of the defendant to juvenile court so that a transfer hearing can be held.⁴ Pursuant to the California Rules of Court, rules 4.116(b) and (c), the assigned deputy must ensure that the certification order includes the following information: the offense(s) with which the defendant is charged; a finding that the defendant was under the age of 18 at the time the offense(s) was/were committed; the defendant's date of birth; the date criminal proceedings were suspended; and the date and time the matter was certified to juvenile court.

Copies of the certification order, the complaint, and any police reports must immediately be transmitted to the clerk of the juvenile court. Bail must be revoked, and the accused must be remanded to custody; no bail is allowed. If the accused is in custody and under 18 years old, the accused must immediately be transported to Central Juvenile Hall. (Cal. Rules of Court, rule 4.116(d).) The assigned deputy may contact the Deputy-in-Charge of the appropriate juvenile office for guidance on facilitating the transportation of the juvenile and communicating with the Probation Department to ensure that a detention report is prepared.

A new petition must be filed in juvenile court within 48 hours of the minor's arrest, excluding weekends and judicial holidays, and the minor must be arraigned the following day.⁵ The assigned deputy is to deliver a courtesy copy of the motion, together with a copy of the charging document, any related police reports, and a print-out of the juvenile's criminal history, to the Deputy-in-Charge of the juvenile office. The deputy assigned to the case in adult court will be responsible for making appearances on the case in juvenile court and for conducting the transfer hearing. Departure from this policy as to a given appearance or case requires the prior approval of both the Head Deputy or Deputy-in-Charge of the adult office originally responsible for the case and the Deputy-in-Charge assigned to the juvenile court where the transfer hearing is to be held.

If the juvenile court determines that the minor should be transferred (returned) to adult court, the court will order that the proceedings against the defendant be resumed in a court of criminal jurisdiction. (WIC, § 707.1(a).) The juvenile court must issue orders under WIC section 707.1 relating to bail and the appropriate facility for the custody of the minor, or release the juvenile on his or her own recognizance pending prosecution. The court must then dismiss the petition without prejudice. (Cal. Rules of Court, rule 5.772 (g)(1).)

If, following a transfer hearing, the juvenile court decides that the minor should not be transferred to adult court, the case should be set for a jurisdiction hearing, also known as an adjudication. (See Cal. Rules of Court, rules 5.774, 5.776.) If the assigned deputy believes that the juvenile court's denial of the motion to transfer the juvenile to adult court should be

⁴ A template for this motion is forthcoming, and will be located on LADANET under BUREAUS>BUREAU OF SPECIALIZED PROSECUTIONS-JUVENILE > POLICIES.

⁵ A failure to file a new petition within 48 hours of his or her arrest requires that the minor be released; the minor may not be re-detained even if the case is refiled. (WIC, § 631, subd. (a); *In re Tam T.* (1997) 55 Cal.App.4th 1398 [a minor who is over-detained is released from custody and may not be re-detained unless there is a demonstrated change in circumstances]; *In re Robin M.* (1978) 21 Cal.3d 337 [refiled petition is non-detained if adjudication is not held within 15 days].) It is unknown whether a delay in bringing a minor to juvenile court for a transfer hearing following certification will similarly require that the minor be discharged from custody.

appealed, the deputy must inform the court of the People's intent to seek appellate review, and the appropriate Deputy-In-Charge or Head Deputy should immediately contact the Appellate Division. The juvenile court is required to grant a continuance for no less than two judicial days if the People announce an intent, orally or in writing, to seek review of the juvenile court's ruling.⁶ If the case remains in juvenile court for all purposes, the juvenile office will assume the responsibility of handling the case.

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⁶ The California Rules of Court provide as follows: "If the prosecuting attorney informs the court orally or in writing that a review of a finding of fitness will be sought and requests a continuance of the jurisdiction hearing, the court must grant a continuance for not less than two judicial days to allow time within which to obtain a stay of further proceedings from the reviewing judge or appellate court." (Cal. Rules of Court, rule 5.772(h).)