

GENERAL OFFICE MEMORANDUM 18-176

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM: JOSEPH P. ESPOSITO 
Chief Deputy District Attorney

SUBJECT: SENATE BILL 1391 - PROHIBITION ON TRANSFERRING
14 AND 15-YEAR OLD MINORS TO ADULT COURT

DATE: DECEMBER 27, 2018

Senate Bill (SB) 1391 amends Welfare and Institutions Code (WIC) section 707 by removing the court's authority to transfer minors who commit crimes at the ages of 14 or 15 to adult court jurisdiction. The law becomes effective January 1, 2019.

Review and Handling of Cases Implicated by SB 1391

Effective January 1, 2019, the Juvenile Division shall no longer file a motion to transfer to adult court any case in which a minor committed an offense at the ages of 14 or 15.¹ SB 1391 is retroactive to all cases not yet final on appeal.² Thus, 14 and 15-year-old minors tried as adults will be transferred back to juvenile court for adjudication if his or her case is not yet final on appeal. Head Deputies shall identify all pending cases being handled within their divisions that may be impacted by SB 1391.

Constitutionality

There are valid arguments that SB 1391 is unconstitutional. SB 1391 is a legislative amendment to Proposition 57 (Prop 57). Prop 57 was enacted by ballot initiative. Any amendments to Prop 57 that are inconsistent with the purposes of Prop 57 must be made in the same manner that it was originally enacted, the ballot initiative process. It is arguable that SB 1391 is inconsistent with the purposes behind Prop 57, and therefore unconstitutional.

Consequently, if a deputy handling a case in adult court intends to object to a court's ruling transferring a case back to juvenile court jurisdiction, or a deputy in juvenile court intends to object to a court's ruling to dismiss a transfer motion, the deputy must obtain approval to object

¹ WIC 707(a)(2) still allows for the prosecution to bring a transfer motion to transfer a minor to adult court jurisdiction if the minor committed a WIC 707(b) offense when the minor was 14 or 15 years old, but was not apprehended prior to the end of juvenile court jurisdiction. Arguably, the end of juvenile court jurisdiction is 23 years old.

² New legislation ameliorating punishment, including the ability to prosecute juveniles in criminal court, is presumptively retroactive to all nonfinal cases. (*People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 303.) "A judgment becomes final when the availability of an appeal and the time for filing a petition for certiorari with the United States Supreme Court have expired." (*People v. Buycks* (2018) 5 Cal. 5th 857, 876, fn. 5.)

from his or her Head Deputy at the earliest opportunity. Head Deputies shall consult with the Head Deputy of the Appellate Division prior to reaching a decision. In an appropriate case, the Appellate Division will provide a template opposition to the assigned deputy to file in court.

Challenging a Court's Ruling

In an appropriate case, the office will consider taking a writ on an adverse ruling to the Court of Appeal. Deputies may request the Office file an appeal by memorandum through his or her chain of command to the Appellate Division.

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