
PROSECUTING A JUVENILE AS AN ADULT



[REDACTED], Senior Deputy District Attorney

TRANSFER HEARING – WHY TRANSFER?

Juvenile Court jurisdiction extends to:

§ 607. Retention of jurisdiction

(a) The court may retain jurisdiction over a person who is found to be a ward or dependent child of the juvenile court until the ward or dependent child attains 21 years of age, except as provided in subdivisions (b), (c), and (d).

(b) The court may retain jurisdiction over a person who is found to be a person described in Section 602 by reason of the commission of an offense listed in subdivision (b) of Section 707, until that person attains 25 years of age if the person was committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities

TRANSFER HEARING – WHY TRANSFER?

Juvenile Court jurisdiction extends to

§ 607. Retention of jurisdiction [Operative July 1, 2021 – Part of SB 823]

(a) The court may retain jurisdiction over a person who is found to be a ward or dependent child of the juvenile court until the ward or dependent child attains 21 years of age, except as provided in subdivisions (b), (c), and (d).

(b) The court may retain jurisdiction over a person who is found to be a person described in Section 602 by reason of the commission of an offense listed in subdivision (b) of Section 707, until that person attains 23 years of age, subject to the provisions of subdivision (c).

(c) The court may retain jurisdiction over a person who is found to be a person described in Section 602 by reason of the commission of an offense listed in subdivision (b) of Section 707 until that person attains 25 years of age if the person, at the time of adjudication of a crime or crimes, would, in criminal court, have faced an aggregate sentence of seven years or more.

TRANSFER HEARING – WHY TRANSFER?

ALSO UNDER SB 823:

Transfer of juvenile supervision from the state to the county

No more Department of Corrections and Rehabilitation, Juvenile Justice Division. Now Office of Youth and Community Restoration under the Health and Human Services (HSS) Division

Facilities and programming for older juveniles with long commitments unknown

HISTORY – CALIFORNIA PROPOSITION 21, APPROVED BY VOTERS MARCH 7, 2000

DIRECT FILE BY PROSECUTOR IN ADULT COURT

- If 16 or over – any 707(b) offense
- If 14 or over
 - Life or death sentence
 - Personal use of a firearm
 - 707(b) crime plus an aggravating circumstance:
 - Prior finding for 707(b) offense
 - 186.22 Gang Crime
 - Hate Crime
 - Victim 65+ or disabled

HISTORY – CALIFORNIA PROPOSITION 21, APPROVED BY VOTERS MARCH 7, 2000

“FITNESS” HEARING

(To determine if “a minor is a fit and proper subject to be dealt with under the juvenile court law”)

- If 16 or over - any offense (presumed fit)
- If 16 or over - felony offense + 2 prior felonies since 14 (presumed unfit)
- If 14 or over - 707(b) (presumed unfit)

HISTORY – CALIFORNIA PROPOSITION 57, APPROVED BY VOTERS NOVEMBER 8, 2016

- Prosecutors no longer able to file directly in adult court
- Judge decides whether a person should be “transferred” to adult court
- No longer any presumptions
- The People must give notice prior to jeopardy attaching
- Applied to all cases that had not reached a final judgement

HISTORY – CALIFORNIA

SENATE BILL 1391, APPROVED BY GOVERNOR BROWN

SEPTEMBER 30, 2018

- Juvenile who was 14 or 15 at time of offense may only be transferred to adult court if he/she was not apprehended until 18 or older.
- Held to be constitutional as it furthered the rehabilitative purposes of Prop 57 (*B.M. v. Superior Court*, 40 Cal. App. 5th 742)

WHY THE CHANGE?

NATIONAL SHIFT IN TREATMENT OF JUVENILES

HISTORY:

Roper v. Simmons (2005) 543 U.S. 551 - A juvenile sentenced to death is a violation of the Eighth Amendment

Graham v. Florida (2011) 560 U.S. 48 – A LWOP sentence for a juvenile offender convicted of a non-homicide case is a violation of the Eighth Amendment

Miller v. Alabama (2012) 567 U.S. 460 – A mandatory LWOP sentence for a juvenile offender is a violation of the Eighth Amendment

People v. Caballero (2012) 55 Cal 4th 262 – (attempted murder case, 110 years to life) A sentence that is the equivalent of an LWOP sentence for a juvenile offender is a violation of the Eighth Amendment

MILLER V. ALABAMA

Life without parole is only an appropriate punishment for “the rare juvenile offender whose crime reflects irreparable corruption.”

TO IMPOSE A LWOP SENTENCE FOR A JUVENILE, A COURT MUST CONSIDER:

- 1) Age and hallmark factors of youth including immaturity, impetuosity, failure to appreciate risks and consequences
- 2) Family and home environment
- 3) Circumstances of the homicide, the extent of participation, familial and/or peer pressure
- 4) Could have been convicted of a lesser if not for youth, inability to deal with police, or incapacity to assist attorney

TRANSFER HEARING - PROCEDURE

- [REDACTED]
[REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

TRANSFER HEARING

Cal. Rules of Court, Rule 5.770

Burden of proof is on petitioner, by a preponderance of the evidence.

Following receipt of the probation officer's report and any other relevant evidence, the court may order that the child 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 any alleged felony offense, 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 should be transferred to the jurisdiction of the criminal court based on an evaluation of all of the criteria in section 707(a)(3)

TRANSFER HEARING – 707(a)

- (1)** In any case in which a minor is alleged to be a person described in Section 602 by reason of a violation when he or she was 16 or older, of any offense in subdivision (b) or any other felony....
- (2)** In any case in which a minor is alleged to be a person described in Section 602 by reason of a violation when he or she was 14 or 15, of any offense in subdivision (b) but was not apprehended until the end of jurisdiction....

The prosecutor may make a motion to transfer the minor to a court of criminal jurisdiction (adult court). Upon such motion the court shall order the probation department to prepare a report about the behavioral patterns and social history of the minor or former minor

TRANSFER HEARING – 707(b)

- (1) Murder.
- (2) Arson, as provided in subdivision (a) or (b) of [Section 451 of the Penal Code](#).
- (3) Robbery.
- (4) Rape with force, violence, or threat of great bodily harm.
- (5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.
- (6) A lewd or lascivious act as provided in subdivision (b) of [Section 288 of the Penal Code](#).
- (7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.
- (8) An offense specified in subdivision (a) of [Section 289 of the Penal Code](#).
- (9) Kidnapping for ransom.
- (10) Kidnapping for purposes of robbery.
- (11) Kidnapping with bodily harm.
- (12) Attempted murder.
- (13) Assault with a firearm or destructive device.
- (14) Assault by any means of force likely to produce great bodily injury.
- (15) Discharge of a firearm into an inhabited or occupied building.
- (16) An offense described in [Section 1203.09 of the Penal Code](#).
- (17) An offense described in [Section 12022.5 or 12022.53 of the Penal Code](#).
- (18) A felony offense in which the minor personally used a weapon described in any provision listed in [Section 16590 of the Penal Code](#).
- (19) A felony offense described in [Section 136.1 or 137 of the Penal Code](#).
- (20) Manufacturing, compounding, or selling one-half ounce or more of a salt or solution of a controlled substance specified in subdivision (e) of [Section 11055 of the Health and Safety Code](#).
- (21) A violent felony, as defined in subdivision (c) of [Section 667.5 of the Penal Code](#), which also would constitute a felony violation of subdivision (b) of [Section 186.22 of the Penal Code](#).
- (22) Escape, by the use of force or violence, from a county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of [Section 871](#) if great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.
- (23) Torture as described in [Sections 206 and 206.1 of the Penal Code](#).
- (24) Aggravated mayhem, as described in [Section 205 of the Penal Code](#).
- (25) Carjacking, as described in [Section 215 of the Penal Code](#), while armed with a dangerous or deadly weapon.
- (26) Kidnapping for purposes of sexual assault, as punishable in subdivision (b) of [Section 209 of the Penal Code](#).
- (27) Kidnapping as punishable in [Section 209.5 of the Penal Code](#).
- (28) The offense described in subdivision (c) of [Section 26100 of the Penal Code](#).
- (29) The offense described in [Section 18745 of the Penal Code](#).
- (30) Voluntary manslaughter, as described in subdivision (a) of [Section 192 of the Penal Code](#).

TRANSFER HEARING – 707(a)(3)

(A)(i) The degree of criminal sophistication exhibited by the minor.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's family and community environment and childhood trauma on the minor's criminal sophistication.

(B)(i) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's potential to grow and mature.

(C)(i) The minor's previous delinquent history.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the seriousness of the minor's previous delinquent history and the effect of the minor's family and community environment and childhood trauma on the minor's previous delinquent behavior.

(D)(i) Success of previous attempts by the juvenile court to rehabilitate the minor.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the adequacy of the services previously provided to address the minor's needs.

(E)(i) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but 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.

TRANSFER HEARING - WHAT IS ADMISSIBLE?

- [REDACTED]
- Hearsay evidence is admissible
 - People v. Chi Ko Wong (1976) 18 C3d 698 (applied to “fitness” hearings, but rationale behind admissibility remains the same for “transfer” hearings)

“It is clear that the very nature of the fitness hearing precludes imposition of strict evidentiary standards. As the issue therein is not whether the minor committed a specified act, but rather whether he is amenable to the care, treatment and training program available through juvenile court facilities, it is manifest that a finding of fitness or unfitness is largely a subjective determination based on hearsay and opinion evidence. Indeed, the probation officer's report on behavioral patterns must consist mainly of statements based on the observations of others and is clearly hearsay whether handed to the judge in writing or delivered orally by the probation officer. Thus, it has been said that “[there] appear to be no limitations upon the evidence that the court may consider at the remand or referral hearing, other than the basic tests of *relevancy* and *materiality* to the issue presented. The requirement that the court must read and consider the probation officer's report on behavioral patterns introduces a wide assortment of hearsay, opinion evidence, evidence of prior offenses, school reports, and other miscellaneous information.”

TRANSFER HEARING - WHAT IS ADMISSIBLE?

- [REDACTED]
 - [REDACTED]
- [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]

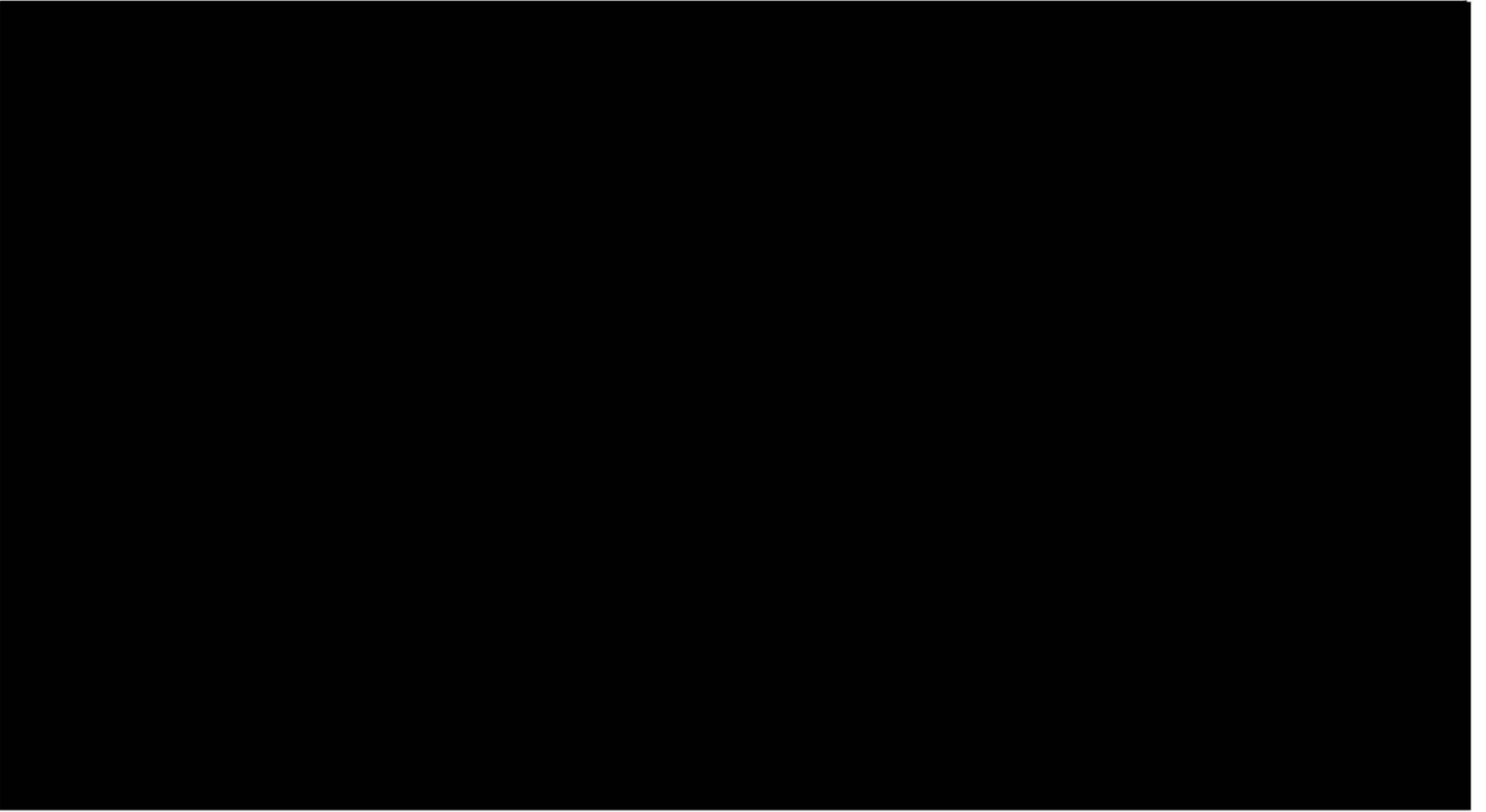
TRANSFER HEARING - WHAT IS ADMISSIBLE?

-
- | Row | Bar Length (approx. relative units) |
|-----|-------------------------------------|
| 1 | 95 |
| 2 | 50 |
| 3 | 15 |
| 4 | 35 |
| 5 | 18 |
| 6 | 38 |
| 7 | 55 |
| 8 | 70 |
| 9 | 100 |
| 10 | 45 |

Factors to consider when making **Life Offers** / How long will your Def. actually serve nowadays



Factors to consider when making **non-Life Offers** / How long will your Def. actually serve nowadays



SENATE BILL 260 – APPROVED BY GOVERNOR SEPTEMBER 16, 2013

- The measure finds "that, as stated by the United States Supreme Court in *Miller* 'only a relatively small proportion of adolescents' who engage in illegal activity 'develop entrenched patterns of problem behavior,' and that 'developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds,' including 'parts of the brain involved in behavior control.' The Legislature recognizes that youthfulness both lessens a juvenile's moral culpability and enhances the prospect that, as a youth matures into an adult and neurological development occurs, these individuals can become contributing members of society. The purpose of this act is to establish a parole eligibility mechanism that provides a person serving a sentence for crimes that he or she committed as a juvenile the opportunity to obtain release when he or she has shown that he or she has been rehabilitated and gained maturity, in accordance with the decision of the California Supreme Court in [*Caballero*] and the decisions of the United States Supreme Court in [*Graham*] and [*Miller*]."

SENATE BILL 260 = PC 3051- YOUTHFUL OFFENDER PAROLE HEARING

WHO DOES IT APPLY TO?

A youth offender parole hearing is a hearing by the Board of Parole Hearings for the purpose of reviewing the parole suitability of any prisoner who was **25 years of age** or younger, or was under 18 years of age as specified in paragraph (4) of subdivision (b), at the time of the controlling offense.

- Applied retroactively to all inmates who were convicted for crimes they committed before turning 18
- Applied to anyone whose case had not reached a final judgement
- Initially applied to defendants who were “under 23” at the time the crime was committed
- Amended in 2015 to include all inmates who were 25 or younger

PC 3051- YOUTHFUL OFFENDER PAROLE HEARING

WHEN?

- (1)** A person who was convicted of a controlling offense that was committed when the person was 25 years of age or younger and for which the sentence is a determinate sentence shall be eligible for release on parole at a youth offender parole hearing during the person's 15th year of incarceration. The youth parole eligible date for a person eligible for a youth offender parole hearing under this paragraph shall be the first day of the person's 15th year of incarceration.
- (2)** A person who was convicted of a controlling offense that was committed when the person was 25 years of age or younger and for which the sentence is a life term of less than 25 years to life shall be eligible for release on parole at a youth offender parole hearing during the person's 20th year of incarceration. The youth parole eligible date for a person eligible for a youth offender parole hearing under this paragraph shall be the first day of the person's 20th year of incarceration.
- (3)** A person who was convicted of a controlling offense that was committed when the person was 25 years of age or younger and for which the sentence is a life term of 25 years to life shall be eligible for release on parole at a youth offender parole hearing during the person's 25th year of incarceration. The youth parole eligible date for a person eligible for a youth offender parole hearing under this paragraph shall be the first day of the person's 25th year of incarceration.
- (4)** A person who was convicted of a controlling offense that was committed before the person had attained 18 years of age and for which the sentence is life without the possibility of parole shall be eligible for release on parole at a youth offender parole hearing during the person's 25th year of incarceration. The youth parole eligible date for a person eligible for a youth offender parole hearing under this paragraph shall be the first day of the person's 25th year of incarceration.

PC 3051- YOUTHFUL OFFENDER PAROLE HEARING

WHAT DO THEY CONSIDER?

PC 4801(c) When a prisoner committed his or her controlling offense, as defined in subdivision (a) of Section 3051, when he or she was 25 years of age or younger,, the board, in reviewing a prisoner's suitability for parole pursuant to Section 3041.5, shall give great weight to the **diminished culpability of juveniles as compared to adults, the hallmark features of youth**, and any **subsequent growth and increased maturity** of the prisoner in accordance with relevant case law.

SO...

FRANKLIN-GRAHAM HEARING

People v. Franklin (2016) 63 Cal. 4th 261:

- Defendant, 16, convicted of 187 + gun enhancement = 50 to life after PC 3051.
- CA Supreme Court said PC 3051 made his Eighth Amendment violation claim moot because he was entitled to a parole hearing after 25 years.
- Remanded for court to make a record consistent with *Graham (Miller)* factors for murders also.

FRANKLIN-GRAHAM HEARING

WHAT IS ADMISSIBLE?

The chart displays the following data series:

Category	Percentage
Not Admissible	10%
Admissible	90%
Not Admissible	40%
Admissible	60%
Not Admissible	10%
Admissible	90%
Not Admissible	10%
Admissible	90%
Not Admissible	10%
Admissible	90%

- [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

FRANKLIN-GRAHAM HEARING

- [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]

FRANKLIN-GRAHAM HEARING

THE END