

AMENDMENTS TO THE CALIFORNIA RULES OF COURT  
Adopted by the Judicial Council on May 19, 2017, effective May 22, 2017

1	Rule 4.116. Certification to juvenile court.....	2
2	Rule 5.664. Training requirements for children’s counsel in delinquency	
3	proceedings (§ 634.3).....	2
4	Rule 5.766. General provisions.....	3
5	Rule 5.768. Report of probation officer.....	4
6	Rule 5.770. Conduct of <del>fitness</del> transfer of jurisdiction hearing under section	
7	707 <del>(a)(1)</del> .....	5
8	Rule 5.772. Conduct of fitness hearings under sections 707(a)(2) and 707(c)	
9	[Repealed].....	10
10		

1 **Rule 4.116. Certification to juvenile court**

2  
3 **(a) Application**

4  
5 This rule applies to all cases not filed in juvenile court in which the person charged  
6 by an accusatory pleading appears to be under the age of 18, except ~~(1) when the~~  
7 ~~child has been found not a fit and proper subject to be dealt with under the juvenile~~  
8 ~~court law or (2) when the prosecution was initiated as a criminal case under~~  
9 ~~Welfare and Institutions Code section 602(b) or 707(d)~~ when jurisdiction over the  
10 child has been transferred from the juvenile court under Welfare and Institutions  
11 Code section 707.

12  
13 *(Subd (a) amended effective May 22, 2017; adopted effective January 1, 2001; previously*  
14 *amended effective January 1, 2007.)*

15  
16 **(b)–(d) \* \* \***

17  
18 *Rule 4.116 amended effective May 22, 2017; adopted as rule 241.2 effective January 1, 1991;*  
19 *previously amended and renumbered effective January 1, 2001; previously amended July 1, 1991,*  
20 *and January 1, 2007.*

21  
22 **Rule 5.664. Training requirements for children’s counsel in delinquency**  
23 **proceedings (§ 634.3)**

24  
25 **(a) \* \* \***

26  
27 **(b) Education and training requirements**

28  
29 (1) \* \* \*

30  
31 (2) Attorney training must include:

32  
33 (A)–(P) \* \* \*

34  
35 (Q) Fitness Transfer of jurisdiction to criminal court hearings and advocacy  
36 in adult court;

37  
38 (R)–(S) \* \* \*

39  
40 *(Subd (b) amended effective May 22, 2017.)*

1 (c)–(d) \* \* \*

2  
3 *Rule 5.664 amended effective May 22, 2017; adopted effective July 1, 2016.*

4  
5 **Rule 5.766. General provisions**

6  
7 **(a) ~~Fitness hearing~~ Hearing on transfer of jurisdiction to criminal court (§ 707)**

8  
9 A child who is the subject of a petition under section 602(a) and who was 14 years  
10 or older at the time of the alleged felony offense may be considered for prosecution  
11 under the general law in a court of criminal jurisdiction. The ~~prosecuting attorney~~  
12 district attorney or other appropriate prosecuting officer may ~~request a hearing to~~  
13 ~~determine whether the child is a fit and proper subject to be dealt with under the~~  
14 ~~juvenile court law~~ make a motion to transfer the child from juvenile court to a court  
15 of criminal jurisdiction, in one of the following circumstances:

16  
17 ~~(3)(1) Under section 707(e),~~ The child was 14 years or older at the time of the  
18 alleged offense listed in section 707(b).

19  
20 ~~(1)(2) Under section 707(a)(1),~~ The child was 16 years or older at the time of the  
21 alleged felony offense if the offense is not listed in section 707(b).

22  
23 ~~(2) Under section 707(a)(2), the child was 16 years or older at the time of the~~  
24 ~~alleged felony offense not listed in section 707(b) and has been declared a~~  
25 ~~ward of the court under section 602 on at least one prior occasion and:~~

26  
27 ~~(A) The child has previously been found to have committed two or more~~  
28 ~~felony offenses; and~~

29  
30 ~~(B) The felony offenses in the previously sustained petitions were~~  
31 ~~committed when the child was 14 years or older.~~

32  
33 *(Subd (a) amended effective May 22, 2017; previously amended effective January 1, 1996,*  
34 *and January 1, 2001.)*

35  
36 **(b) Notice (§ 707)**

37  
38 Notice of the ~~fitness transfer~~ hearing must be given at least five judicial days before  
39 the ~~fitness~~ hearing. In no case may notice be given following the attachment of  
40 jeopardy.

41  
42 *(Subd (b) amended effective May 22, 2017; previously amended effective January 1, 2007.)*

1  
2 **(c) Prima facie showing**

3  
4 On the child’s motion, the court must determine whether a prima facie showing has  
5 been made that the offense alleged is an offense that makes the child subject to  
6 transfer as set forth in subdivision (a).

7  
8 *(Subd (c) adopted effective May 22, 2017.)*

9  
10 **~~(e)~~(d) Time of fitness transfer hearing—rules 5.774, 5.776**

11  
12 The ~~fitness transfer of jurisdiction~~ hearing must be held and the court must rule on  
13 the ~~issue of fitness~~ the request to transfer jurisdiction before the jurisdiction hearing  
14 begins. Absent a continuance under rule 5.776 or the child’s waiver of the statutory  
15 time period to commence the jurisdiction hearing, the jurisdiction hearing must  
16 begin within the time limits under rule 5.774.

17  
18 *(Subd (d) amended and relettered effective May 22, 2017; adopted as subd (c); previously*  
19 *amended effective January 1, 2007.)*

20  
21 *Rule 5.766 amended effective May 22, 2017; adopted as rule 1486 effective January 1, 1991;*  
22 *previously amended and renumbered effective January 1, 2007.*

23  
24 **Rule 5.768. Report of probation officer**

25  
26 **(a) Contents of report (§ 707)**

27  
28 The probation officer must ~~investigate the issue of fitness~~ prepare and submit to the  
29 court a report on the behavioral patterns and social history of the child being  
30 considered. The report must include information relevant to the determination of  
31 whether ~~or not the child would be amenable to the care, treatment, and training~~  
32 ~~program available through the facilities of the juvenile court, including information~~  
33 ~~regarding all of the criteria listed in rules 5.770 and 5.772~~ should be retained under  
34 the jurisdiction of the juvenile court or transferred to the jurisdiction of the criminal  
35 court, including information regarding all of the criteria in section 707(a)(2). The  
36 report must also include any written or oral statement offered by the victim  
37 pursuant to section 656.2. The report may also include information concerning:

38  
39 (1) ~~The social, family, and legal history of the child;~~

40  
41 (2) ~~Any statement the child chooses to make regarding the alleged offense;~~

42  
43 (3) ~~Any statement by a parent or guardian;~~

1  
2 (4) — If the child is or has been under the jurisdiction of the court, a statement by  
3 the social worker, probation officer, or Youth Authority parole agent who has  
4 supervised the child regarding the relative success or failure of any program  
5 of rehabilitation; and

6  
7 (5) — Any other information relevant to the determination of fitness.

8  
9 *(Subd (a) amended effective May 22, 2017; previously amended effective January 1, 2007.)*

10  
11 **(b) Recommendation of probation officer (§§ 281, 707)**

12  
13 If the court, under section 281, orders the probation officer to include a  
14 recommendation, the probation officer must make a recommendation to the court  
15 as to whether the child is a fit and proper subject to be dealt with under the juvenile  
16 court law should be retained under the jurisdiction of the juvenile court or  
17 transferred to the jurisdiction of the criminal court.

18  
19 *(Subd (b) amended effective May 22, 2017; previously amended effective January 1, 2007.)*

20  
21 **(c) Copies furnished**

22  
23 The probation officer's report on the behavioral patterns and social history of the  
24 child must be furnished to the child, the parent or guardian, and all counsel at least  
25 24 hours two court days before commencement of the fitness hearing on the  
26 motion. A continuance of at least 24 hours must be granted on the request of any  
27 party who has not been furnished the probation officer's report in accordance with  
28 this rule.

29  
30 *(Subd (c) amended effective May 22, 2017; previously amended effective January 1, 2007.)*

31  
32 *Rule 5.768 amended effective May 22, 2017; adopted as rule 1481 effective January 1, 1991;*  
33 *previously amended and renumbered effective January 1, 2007.*

34  
35 **Rule 5.770. Conduct of fitness transfer of jurisdiction hearing under section**  
36 **707(a)(1)**

37  
38 **(a) Burden of proof (§ 707(a)(1))**

39  
40 In a fitness transfer of jurisdiction hearing under section 707(a)(1), the burden of  
41 proving that the child is unfit there should be a transfer of jurisdiction to criminal  
42 court jurisdiction is on the petitioner, by a preponderance of the evidence.

1 (Subd (a) amended effective May 22, 2017; previously amended effective January 1, 1996,  
2 January 1, 2001, and July 1, 2002.)

3  
4 **(b) Criteria to consider (§ 707(a)(1))**

5  
6 Following receipt of the probation officer's report and any other relevant evidence,  
7 the court may find that order that the child is not a fit and proper subject to be dealt  
8 with under juvenile court law be transferred to the jurisdiction of the criminal court  
9 if the court finds:

- 10  
11 (1) The child was 16 years or older at the time of ~~the~~ any alleged felony offense,  
12 and or the child was 14 or 15 years at the time of an alleged felony offense  
13 listed in section 707(b); and  
14  
15 (2) The child ~~would not be amenable to the care, treatment, and training program~~  
16 ~~available through facilities of the juvenile court;~~ should be transferred to the  
17 jurisdiction of the criminal court based on an evaluation of all of the  
18 following criteria in section 707(a)(2) as provided in that section.:  
19  
20 (A) ~~The degree of criminal sophistication exhibited by the child;~~  
21  
22 (B) ~~Whether the child can be rehabilitated before the expiration of~~  
23 ~~jurisdiction;~~  
24  
25 (C) ~~The child's previous delinquent history;~~  
26  
27 (D) ~~The results of previous attempts by the court to rehabilitate the child;~~  
28 ~~and~~  
29  
30 (E) ~~The circumstances and gravity of the alleged offense.~~

31  
32 (Subd (b) amended effective May 22, 2017; adopted as subd (b); previously amended and  
33 relettered as subd (c) effective January 1, 1996; previously amended and relettered  
34 effective January 1, 2001; previously amended effective January 1, 2007.)

35  
36 **(c) ~~Findings under section 707(a)(1)~~ Basis for order of transfer**

37  
38 The findings ~~must be stated in the order.~~

39  
40 (1) ~~Finding of fitness~~

41  
42 The court may ~~find the child to be fit and state that finding.~~

1           ~~(2) — Finding of unfitness~~

2  
3           If the court determines the child is unfit, the court must find that:

4  
5           ~~(A) — The child was 16 years or older at the time of the alleged offense; and~~

6  
7           ~~(B) — The child would not be amenable to the care, treatment, and training~~  
8           ~~program available through the juvenile court because of one or a~~  
9           ~~combination of more than one of the criteria listed in (b)(2).~~

10  
11           If the court orders a transfer of jurisdiction to the criminal court, the court must  
12           recite the basis for its decision in an order entered on the minutes.

13  
14           *(Subd (c) amended effective May 22, 2017; adopted as subd (c); previously amended and*  
15           *relettered as subd (d) effective January 1, 1996; amended and relettered effective January*  
16           *1, 2001; previously amended effective July 1, 2002, and January 1, 2007.)*

17  
18           ~~(d) — Maintenance of juvenile court jurisdiction~~

19  
20           ~~If the court determines that one or more of the criteria listed in (b)(2) apply to the~~  
21           ~~child, the court may nevertheless find that the child is amenable to the care,~~  
22           ~~treatment, and training program available through the juvenile court and may find~~  
23           ~~the child to be a fit and proper subject to be dealt with under juvenile court law.~~

24  
25           ~~(e) — Extenuating circumstances~~

26  
27           ~~The court may consider extenuating or mitigating circumstances in the evaluation~~  
28           ~~of each relevant criterion.~~

29  
30           ~~(f)~~(d) Procedure following findings

31  
32           (1) If the court finds the child ~~to be fit~~ should be retained within the jurisdiction  
33           of the juvenile court, the court must proceed to jurisdiction hearing under rule  
34           5.774.

35  
36           (2) If the court finds the child ~~to be unfit~~ should be transferred to the jurisdiction  
37           of the criminal court, the court must make orders under section 707.1 relating  
38           to bail and to the appropriate facility for the custody of the child, or release  
39           on own recognizance pending prosecution. The court must set a date for the  
40           child to appear in criminal court and dismiss the petition without prejudice  
41           upon the date of that appearance.  
42

1           (3) When the court rules on the request to transfer the child to the jurisdiction of  
2 the criminal court, the court must advise all parties present that appellate  
3 review of the order must be by petition for extraordinary writ. The  
4 advisement may be given orally or in writing when the court makes the  
5 ruling. The advisement must include the time for filing the petition for  
6 extraordinary writ as set forth in subdivision (g) of this rule.

7  
8           *(Subd (d) relettered and amended effective May 22, 2017; adopted as subd (d); previously*  
9 *relettered as subd (g) effective January 1, 1996, and as subd (f) effective January 1, 2001;*  
10 *previously amended effective July 1, 2002, and January 1, 2007.)*

11  
12 **(g)(e) Continuance to seek review**

13  
14           If the prosecuting attorney informs the court orally or in writing that a review ~~of a~~  
15 finding of fitness of the court's decision not to transfer jurisdiction to the criminal  
16 court will be sought and requests a continuance of the jurisdiction hearing, the  
17 court must grant a continuance for not less than two judicial days to allow time  
18 within which to obtain a stay of further proceedings from the reviewing judge or  
19 appellate court.

20  
21           *(Subd (e) relettered and amended effective May 22, 2017; adopted as subd (e); previously*  
22 *relettered as subd (h) effective January 1, 1996, and as subd (g) effective January 1, 2001;*  
23 *previously amended effective July 1, 2002, and January 1, 2007.)*

24  
25 **(h)(f) Subsequent role of judicial officer**

26  
27           Unless the child objects, the judicial officer who has conducted a ~~fitness~~ hearing on  
28 a motion to transfer jurisdiction may participate in any subsequent contested  
29 jurisdiction hearing relating to the same offense.

30  
31           *(Subd (f) relettered and amended effective May 22, 2017; adopted as subd (f); relettered as*  
32 *subd (i) effective January 1, 1996; previously amended and relettered as subd (h) effective*  
33 *January 1, 2001.)*

34  
35 **(i)(g) Review of fitness determination on a motion to transfer jurisdiction to**  
36 **criminal court**

37  
38           An order ~~that a child is or is not a fit and proper subject to be dealt with under the~~  
39 juvenile court law granting or denying a motion to transfer jurisdiction of a child to  
40 the criminal court is not an appealable order. Appellate review of the order is by  
41 petition for extraordinary writ. Any petition for review of a judge's order  
42 ~~determining the child unfit~~ to transfer jurisdiction of the child to the criminal court,  
43 or denying an application for rehearing of the referee's determination ~~of unfitness~~



1 to transfer jurisdiction of the child to the criminal court, must be filed no later than  
2 20 days after the child's first arraignment on an accusatory pleading based on the  
3 allegations that led to the ~~unfitness determination~~ transfer of jurisdiction order.

4  
5 *(Subd (g) relettered and amended effective May 22, 2017; adopted as subd (g); previously*  
6 *relettered as subd (j) effective January 1, 1996; amended and relettered effective 1, 2001;*  
7 *previously amended as subd (i) effective July 1, 2002.)*

8  
9 **(h) Postponement of plea prior to transfer hearing**

10  
11 If a hearing for transfer of jurisdiction has been noticed under section 707, the court  
12 must postpone the taking of a plea to the petition until the conclusion of the transfer  
13 hearing, and no pleas that may have been entered already may be considered as  
14 evidence at the hearing.

15  
16 *(Subd (h) adopted effective May 22, 2017.)*

17  
18 *Rule 5.770 amended effective May 22, 2017; adopted as rule 1482 effective January 1, 1991;*  
19 *previously amended effective January 1, 1996, January 1, 2001, and July 1, 2002; previously*  
20 *amended and renumbered effective January 1, 2007.*

21  
22 **Advisory Committee Comment**

23  
24 **Subdivision (b).** This subdivision reflects changes to section 707 as a result of the passage of  
25 Senate Bill 382 (Lara; Stats. 2015, ch. 234) and Proposition 57, the Public Safety and  
26 Rehabilitation Act of 2016. SB 382 was intended to clarify the factors for the juvenile court to  
27 consider when determining whether a case should be transferred to criminal court by emphasizing  
28 the unique developmental characteristics of children and their prior interactions with the juvenile  
29 justice system. Proposition 57 provided that its intent was to promote rehabilitation for juveniles  
30 and prevent them from reoffending, and to ensure that a judge makes the determination that a  
31 child should be tried in a criminal court. Consistent with this intent, the committee urges juvenile  
32 courts—when evaluating the statutory criteria to determine if transfer is appropriate—to look at  
33 the totality of the circumstances, taking into account the specific statutory language guiding the  
34 court in its consideration of the criteria.

35  
36 **Subdivision (c).** While this rule and section 707 only require the juvenile court to recite the basis  
37 for its decision when the transfer motion is granted, the advisory committee believes that juvenile  
38 courts should, as a best practice, state the basis for their decisions on these motions in all cases so  
39 that the parties have an adequate record from which to seek subsequent review.

1 **Rule 5.772. Conduct of fitness hearings under sections 707(a)(2) and 707(c)**

2 **[Repealed]**

3  
4 ~~(a) — **Presumption (§§ 707(a)(2), 707(c))**~~

5  
6 ~~In a fitness hearing under section 707(a)(2) or 707(c), the child is presumed to be~~  
7 ~~unfit, and the burden of rebutting the presumption is on the child, by a~~  
8 ~~preponderance of the evidence.~~

9  
10 ~~(b) — **Prima facie showing**~~

11  
12 ~~On the child's motion, the court must determine whether a prima facie showing has~~  
13 ~~been made that the offense alleged is a felony or is specified in section 707(b).~~

14  
15 ~~(c) — **Criteria to consider (§ 707(a)(2))**~~

16  
17 ~~Following receipt of the probation officer's report and any other relevant evidence,~~  
18 ~~the court must find that the child is not a fit and proper subject to be dealt with~~  
19 ~~under the juvenile court law, unless the court finds:~~

20  
21 ~~(1) — The child was under 16 years of age at the time of the alleged felony offense;~~

22  
23 ~~(2) — The child had not been declared a ward at the time of the alleged offense or~~  
24 ~~any time previously;~~

25  
26 ~~(3) — The child has not previously been found to have committed two or more~~  
27 ~~felony offenses;~~

28  
29 ~~(4) — The prior felony offenses were committed before the child had reached the~~  
30 ~~age of 14 years; or~~

31  
32 ~~(5) — The child would be amenable to the care, treatment, and training program~~  
33 ~~available through the juvenile court, based on evaluation of each of the~~  
34 ~~following criteria:~~

35  
36 ~~(A) — The degree of criminal sophistication exhibited by the child;~~

37  
38 ~~(B) — Whether the child can be rehabilitated before the expiration of~~  
39 ~~jurisdiction;~~

40  
41 ~~(C) — The child's previous delinquent history;~~  
42

1           (D) — The results of previous attempts by the court to rehabilitate the child;  
2           and

3  
4           (E) — The circumstances and gravity of the alleged offense.

5  
6 **(d) — Findings under section 707(c)**

7  
8           Following receipt of the probation officer's report and any other relevant evidence,  
9           the court must find that the child is not a fit and proper subject to be dealt with  
10          under the juvenile court law, unless the court finds:

11  
12          (1) — The child was under 14 years of age at the time of the offense specified in  
13               section 707(b);

14          (2) — The offense alleged is not listed in section 707(b); or

15  
16          (3) — The child would be amenable to the care, treatment, and training program  
17               available through the juvenile court, based on evaluation of each of the  
18               criteria described in (c)(5).

19  
20 **(e) — Extenuating circumstances**

21  
22          The court may consider extenuating or mitigating circumstances in the evaluation  
23          of each relevant criterion.

24  
25 **(f) — Findings (§§ 707(a)(2), 707(c))**

26  
27          The findings must be stated in the order.

28  
29          (1) — *Finding of unfitness (§ 707 (a)(2))*

30  
31               If the child has failed to rebut the presumption of unfitness, the court must  
32               find that:

33  
34               (A) — The child has previously been found to have committed two or more  
35               offenses listed in section 707(b) and was 14 years of age or older at the  
36               time of the felony offenses; and

37  
38               (B) — The child would not be amenable to the care, treatment, and training  
39               program available through the juvenile court because of one or a  
40               combination of more than one of the criteria in (c)(5).

1           (2) — ~~*Finding of unfitness (§ 707(c))*~~

2  
3           If the child has failed to rebut the presumption of unfitness, the court must  
4           find that:

5  
6           (A) — ~~The child was 14 years or older at the time of the alleged offense and~~  
7           ~~the offense is listed in section 707(b); and~~

8  
9           (B) — ~~The child would not be amenable to the care, treatment, and training~~  
10           ~~program available through the juvenile court because of one or a~~  
11           ~~combination of more than one of the criteria in (c)(5).~~

12  
13          (3) — ~~*Finding of fitness (§§ 707(a)(2), 707(c))*~~

14  
15           ~~In order to find the child fit, the court must find that the child would be~~  
16           ~~amenable to the care, treatment, and training program through the juvenile~~  
17           ~~court on each and every criterion in (c)(5), and the court must state that~~  
18           ~~finding of amenability under each and every criterion.~~

19  
20          (g) — **Procedure following findings**

21  
22          (1) — ~~If the court finds the child to be unfit, the court must make orders under~~  
23           ~~section 707.1 relating to bail, and to the appropriate facility for the custody of~~  
24           ~~the child, or release on own recognizance pending prosecution. The court~~  
25           ~~must dismiss the petition without prejudice.~~

26  
27          (2) — ~~If the court finds the child to be fit, the court must proceed to jurisdiction~~  
28           ~~hearing under rule 5.774.~~

29  
30          (h) — **Continuance to seek review**

31  
32           ~~If the prosecuting attorney informs the court orally or in writing that a review of a~~  
33           ~~finding of fitness will be sought and requests a continuance of the jurisdiction~~  
34           ~~hearing, the court must grant a continuance for not less than 2 judicial days to allow~~  
35           ~~time within which to obtain a stay of further proceedings from the reviewing judge~~  
36           ~~or appellate court.~~

37  
38          (i) — **Subsequent role of judicial officer**

39  
40           ~~Unless the child objects, the judicial officer who has conducted a fitness hearing~~  
41           ~~may participate in any subsequent contested jurisdiction hearing relating to the~~  
42           ~~same offense.~~

1 ~~(j) — Review of fitness determination~~

2  
3 ~~An order that a child is or is not a fit and proper subject to be dealt with under the~~  
4 ~~juvenile court law is not an appealable order. Appellate review of the order is by~~  
5 ~~extraordinary writ. Any petition for review of a judge's order determining the child~~  
6 ~~to be unfit or denying an application for rehearing of the referee's determination of~~  
7 ~~unfitness must be filed no later than 20 days after the child's first arraignment on an~~  
8 ~~accusatory pleading based on the allegations that led to the unfitness determination.~~

9  
10 *Rule 5.772 repealed effective May 22, 2017; adopted as rule 1483 effective January 1, 1991;*  
11 *previously amended effective January 1, 1996, and January 1, 2001; previously amended and*  
12 *renumbered effective January 1, 2007; previously amended effective January 1, 2009.*