



California Rules of Court

Rule 5.766. General provisions

(a) Hearing on transfer of jurisdiction to criminal court (§ 707)

A child who is the subject of a petition under section 602 and who was 14 years or older at the time of the alleged felony offense may be considered for prosecution under the general law in a court of criminal jurisdiction. The district attorney or other appropriate prosecuting officer may make a motion to transfer the child from juvenile court to a court of criminal jurisdiction, in one of the following circumstances:

- (1) The child was 14 years or older at the time of the alleged offense listed in section 707(b).
- (2) The child was 16 years or older at the time of the alleged felony offense.

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

(b) Notice (§ 707)

Notice of the transfer hearing must be given at least five judicial days before the hearing. In no case may notice be given following the attachment of jeopardy.

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

(c) Prima facie showing

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

(Subd (c) adopted effective May 22, 2017.)

(d) Time of transfer hearing-rules 5.774, 5.776

The transfer of jurisdiction hearing must be held and the court must rule on the request to transfer jurisdiction before the jurisdiction hearing begins. Absent a continuance under rule 5.776 or the child's waiver of the statutory time period to commence the jurisdiction hearing, the jurisdiction hearing must begin within the time limits under rule 5.774.

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

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



California Rules of Court

Rule 5.768. Report of probation officer

(a) Contents of report (§ 707)

The probation officer must prepare and submit to the court a report on the behavioral patterns and social history of the child being considered. The report must include information relevant to the determination of whether the child should be retained under the jurisdiction of the juvenile court or transferred to the jurisdiction of the criminal court, including information regarding all of the criteria in section 707(a)(2). The report must also include any written or oral statement offered by the victim pursuant to section 656.2.

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

(b) Recommendation of probation officer (§§ 281, 707)

If the court, under section 281, orders the probation officer to include a recommendation, the probation officer must make a recommendation to the court as to whether the child should be retained under the jurisdiction of the juvenile court or transferred to the jurisdiction of the criminal court.

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

(c) Copies furnished

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

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

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



California Rules of Court

Rule 5.770. Conduct of transfer of jurisdiction hearing under section 707

(a) Burden of proof (§ 707)

In a transfer of jurisdiction hearing under section 707, the burden of proving that there should be a transfer of jurisdiction to criminal court jurisdiction is on the petitioner, by a preponderance of the evidence.

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

(b) Criteria to consider (§ 707)

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)(2) as provided in that section.

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

(c) Basis for order of transfer

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

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

(d) Procedure following findings

- (1) If the court finds the child should be retained within the jurisdiction of the juvenile court, the court must proceed to jurisdiction hearing under rule 5.774.
- (2) If the court finds the child should be transferred to the jurisdiction of the criminal court, the court must make orders under section 707.1 relating to bail and to the appropriate facility for the custody of the child, or release on own recognizance pending prosecution. The court must set a date for the child to appear in criminal court and dismiss the petition without prejudice upon the date of that appearance.
- (3) When the court rules on the request to transfer the child to the jurisdiction of the criminal court, the court must advise all parties present that appellate review of the order must be by petition for extraordinary writ. The advisement may be given orally or in writing when the court makes the ruling. The advisement must include the time for filing the petition for extraordinary writ as set forth in subdivision (g) of this rule.

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

(e) Continuance to seek review

If the prosecuting attorney informs the court orally or in writing that a review of the court's decision not to transfer jurisdiction to the criminal court 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.

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

(f) Subsequent role of judicial officer

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

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

(g) Review of determination on a motion to transfer jurisdiction to criminal court

An order granting or denying a motion to transfer jurisdiction of a child to the criminal court is not an appealable order. Appellate review of the order is by petition for extraordinary writ. Any petition for review of a judge's order to transfer jurisdiction of the child to the criminal court, or denying an application for rehearing of the referee's determination to transfer jurisdiction of the child to the criminal court, must be filed no later than 20 days after the child's first arraignment on an accusatory pleading based on the allegations that led to the transfer of jurisdiction order.

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

(h) Postponement of plea prior to transfer hearing

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

(Subd (h) adopted effective May 22, 2017.)

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

Advisory Committee Comment

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

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