

## Revisiting Juvenile Transfer: Where Are We Two Years After Prop 57

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### OVERVIEW OF SESSION

- Overview of Recent Transfer Cases
- Role of the Prosecutor in Transfer
- Role of Defense Counsel in Transfer
- Emerging Issues/Questions?

## Case Law Since Prop. 57

- 707(a) Transfer Hearings
  - Abuse of Discretion Standard: findings of fact reviewed for “substantial evidence”
    - Meaningful appellate review means that the Court must identify the specific facts that persuade the court in the decision.
    - Court should state which of the 707(a)(2) criteria weigh in favor of transfer, against transfer, or neither.
      - Court should explain how it weighed this evidence.
    - Court should clearly and explicitly articulate its evaluative process.
  - Most important factor?
    - Can the Minor be rehabilitated prior to expiration of juvenile court jurisdiction? [WIC 707(a)(3)(B)(i)]
    - WIC 1769 extension of commitment time: 25 years, or two year “period of control”
  - Evidence, supported by the record being considered
    - Conclusions/assumptions not supported by record, upon matters not reasonably relied upon by other experts, or upon factors which are speculative, remote or conjectural provide no evidentiary value to the opinion offered.
    - Petitioner—the District Attorney—carries the burden.
    - “Presumption of Suitability”?

## Legislation Since Prop. 57

- SB 1391
  - Constitutional
    - Consistent with and furthers purpose and intent of Prop. 57
      - Channel more juvenile offenders into juvenile justice system, have juvenile judge make the transfer decision, protect and enhance public safety, save money and resources, and prevent federal courts from indiscriminately releasing prisoners
      - First, Third, Fourth, Fifth, and 6<sup>th</sup> DCA have ruled constitutionally permissible amendment
  - Unconstitutional
    - Legislature cannot overrule the electorate.
      - SB 1391 “prohibits what the initiative authorizes, or authorizes what the initiative prohibits;” i.e., Prop. 57 authorizes possible criminal prosecution of 14-15 year old, and the legislation prevents.
    - “Spirit and purpose” analysis engaged in by other DCA irrelevant
      - Plain language conflicts.
      - Second DCA found SB 1391 unconstitutional.

## Role of the Prosecutor

- People's burden
- Standard: Preponderance of the evidence
  - WIC707(a)(3) Court "shall decide whether the minor should be transferred to a court of criminal jurisdiction."
- M 16 + WIC707(b)
- Address each of the 5 prongs for Fitness determination
  - Including the subfactors: Shall consider criteria specified in subparagraphs (A)-(E); "recite the basis for its decision in the minutes"
- Discussion: Rehabilitation v. Amenability
  - Child would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court.

## Role of Defense Counsel

- Effective, competent, diligent, conscientious representation with adequate investigation and preparation - W & I Code § 634.3(a)(1)
- Use of social workers, mental health, and other experts reasonably necessary to preparation of the case - W & I Code § 634.3(a)(4)
- Have training on advocacy in transfer proceedings – Rule of Court 5.664(2)(Q)

## Role of Counsel

- Understand the differences between pre-SB 382, pre-Prop 57 laws and assure that current laws are applied (no more presumption of unfitness, no more unfit on one criterion, expanded factors for 707 criteria)
- If you rely on older "fitness" cases as authority, make sure you are using them for points not superseded by Prop 57 or other more recent enactments
- Present comprehensive evidence on the 707 criteria even though the prosecution has the burden; put it in a brief supported with exhibits
- Challenge assertions reflecting misunderstanding or misuse of the criteria

## Role of the Prosecutor

- Q: Is the minor committed to a criminal lifestyle that cannot be changed under the juvenile umbrella?
- Evidence:
  - Considered choices in the face of repeated and diverse interventions.
  - Think Broadly when looking for evidence
    - School records, social media, FIs, Probation file
  - Think in terms of character evidence instead of evidence to prove your case.
  - Painting a picture of a person not the facts.
  - Expert
  - Prepare Probation

## Role of Defense Counsel

- Carefully analyze the behavior, life history and capacity of the young person in relation to each 707 criterion
  - Support assertions with evidence from people who know or have worked with the youth; records; reports
  - Use experts to analyze and explain
    - Adolescent development and brain research where appropriate to explain or mitigate behavior; capacity for change
    - Connections to Supreme Court jurisprudence on adolescent development
    - Information about what is available in the juvenile vs. adult systems; what works in rehabilitation

## Role of Counsel

- Thoroughly investigate the case and the young person's life history
- Whenever possible, provide relevant information to the probation officer writing the social study
- Give the court a roadmap through the case with a comprehensive transfer brief supported by exhibits

## Role of Counsel

Assert the Client's Rights/ Help to Clarify the Law:

- Object to misapplications of the facts or law
- Litigate denials of requests for experts
- File a writ pursuant to Rule 5.770(g) within 20 days of the adult court arraignment

## What is Happening in the Field?

Questions? Emerging Issues?