

WIC 707(A) Transfer Cases [Prop 57 (Post Lara) & SB 1391]

C.S. v Superior Court (2018) 29 Cal.App.5th 1009 [6th DCA].

Minor was fifteen when he participated in gang assault that resulted in death of another. Under then-existing “direct file” laws, DA charged minor with murder and attendant enhancements in court of criminal jurisdiction. Minor was convicted of the charged offenses, but prior to sentencing Prop. 57 was passed and necessitated that the juvenile court conduct a retrospective transfer hearing. At the hearing the juvenile court ordered the now-21-year-old transferred to adult/criminal court. The appellate court summarized the evidence before the trial court and determined that the comments from the trial court as it reviewed the evidence and the trial court’s concluding order (“After considering all [the factors] ... in a totality of the circumstances review, this court finds that the People have met its burden...”), left it unable—at least as to the factor concerning criminal sophistication—to determine how the trial court came to its ruling.

The transfer decision was reviewed under the abuse of discretion standard, i.e., the lower court’s findings of fact are reviewed for “substantial evidence.” In this instance, the DCA found that the “transfer decision did not permit meaningful appellate review because the juvenile court did not clearly and explicitly ‘articulate its evaluative process’ by detailing ‘how it weighed the evidence’ and by ‘identify[ing] the specific facts which persuaded the court.’” (*In re Pipinos* (1982) 33 Cal.3d 189, 198.) The DCA noted that “appellate review would be greatly assisted if the juvenile court states which of the section 707(a)(2) criteria weighed in favor of transfer, against transfer, or neither in favor of or against transfer.”

In addition, of particular importance to the DCA was the amendment to section 1769, which allowed C.S. to be held in the Division of Juvenile Facilities (DJF) until he reaches age 25. The DCA was unable to discern from the juvenile court’s order whether that court would have reached a different conclusion regarding transfer had the law provided at the time of the transfer hearing that C.S. could be held in DJF past the age of 23. Thus, because the juvenile court did not clearly and explicitly “articulate its evaluative process” (*Pipinos, supra*, at p. 198.), and given the recent change to section 1769 extending the time C.S. could be held in DJF, a peremptory writ of mandate was issued commanding the juvenile court to vacate the challenged transfer order and make further findings regarding the section 707(a)(2) criteria.

- ***F.G. v. Superior Court of Santa Clara County*, 12/20/2018, H045660, WL 6696555** (unpublished/noncitable, examines CS) Transfer decision did not permit meaningful appellate review because the juvenile court did not “clearly and explicitly ‘articulate its evaluative process’ by detailing ‘how it weighed the evidence’ and by ‘identifying the specific facts which persuaded the court’ to reach its decision. [Citation.]” Section 1769 change to DJF time limit was also important factor.

J.N. v. Superior Court (2018) 23 Cal.App.5th 706 [4th DCA].

After passage of Prop. 57, minor charged with felonies in criminal court was thereafter certified to the juvenile court for a transfer determination. The appellate court determined the juvenile court's decision to transfer the minor was an abuse of discretion, focusing specifically on the factors related to the circumstances/gravity of the offense and whether the minor could be rehabilitated prior to the expiration of jurisdiction. The appellate court detailed numerous facts that supported the juvenile court's determination that the minor was suitable under three of the five factors. As for the other factors, the court zeroed in on the deficiency in the prosecution's evidence: "There must be substantial evidence adduced at the hearing that the minor is not a fit and proper subject for treatment as a juvenile before the court may certify him to the superior court for prosecution. [Citations.]" (*Jimmy H. v. Superior Court (1970) 3 Cal.3d 709, 715.*)

Regarding the possibility of rehabilitation, "the prosecution did not present any expert testimony concerning the programs available, the duration of any of the programs, or whether attendance would rehabilitate J.N. before termination of the juvenile court's jurisdiction. There was no evidence that demonstrated existing programs were unlikely to result in J.N.'s rehabilitation, why they were unlikely to work in this case, or that they would take more than three years to accomplish the task of rehabilitating J.N....'Where an expert bases his conclusion upon assumptions which are not supported by the record, upon matters which are not reasonably relied upon by other experts, or upon factors which are speculative, remote or conjectural, then his conclusion has no evidentiary value. [Citations.] In those circumstances the expert's opinion cannot rise to the dignity of substantial evidence." Thus, since the evidence relied upon by the probation officer was speculative, based on assumptions and largely without foundation, the conclusion had no evidentiary value.

As to the gravity of the offense, the appellate court noted that the lower court outlined considerable factual findings mitigating the gravity of the offense, but it appeared the court assumed juveniles charged with murder were excluded from treatment in juvenile court. Otherwise, the record did not establish substantial evidence in support of the court's finding of unsuitability. The DCA reversed and directed a denial of the transfer motion.

- ***J.G. v. Superior Court of Solano County***, 11/7/18, A154682, WL 5817170 (unpublished/noncitable, distinguishes JN) Court focused on the factual distinctions of the underlying offenses in distinguishing the two cases. Specifically, in characterizing criminal sophistication and gravity/circumstances of the offense, the conduct of the minor will often be dispositive in the balancing. For instance, the acts of an actual killer compared with the aider and abettor, etc.

- ***M.R. v. Superior Court of Riverside County***, 12/20/18, E070855, WL 6696693 (unpublished/noncitable, examines JN) People did not show by substantial evidence that minor cannot be rehabilitated within time remaining of juvenile jurisdiction. Instead, the juvenile court appears to have required petitioner to show that he can be and is suitable for treatment in the juvenile jurisdiction. That was appropriate prior to Proposition 57, under the former presumption of unsuitability for juvenile treatment, but is not under the *current presumption* of suitability.

***People v. Castillero* (2019) 33 Cal.App.5th 393 [6th DCA].**

Case in which minor found unfit for juvenile treatment under prior law, pled guilty to sexual offenses in adult court for 40 years in prison, but prior to sentencing Prop. 57 was enacted. The court denied his request for certification to juvenile court for a transfer hearing. Furthermore, for at least one of the counts the minor was fifteen years old at the time of the offense.

“In a transfer hearing under current law, the court must consider all five factors, but has broad discretion in how to weigh them. (*People v. Garcia* (2018) 30 Cal.App.5th 316, 324–325.) The California Supreme Court has concluded that Proposition 57 effected “an ‘ameliorative change[] to the criminal law’ ” that must be applied to cases whose sentences were not yet final at the time it was enacted. (*People v. Superior Court (Lara)* (2018) 4 Cal.5th. 299, 309; see also *People v. Vieira* (2005) 35 Cal.4th 264, 306 [“[F]or the purpose of determining retroactive application of an amendment to a criminal statute, a judgment is not final until the time for petitioning for a writ of certiorari in the United States Supreme Court has passed.”].)

The DCA further found that SB 1391 applied, as well, and that the one count involving conduct while the minor was aged fifteen would have to be dismissed if the case was transferred to adult court (the DCA noted that neither side argued the constitutionality of the statute and therefore did not address that issue). While the parties disagreed about how this would be determined (the count alleged conduct occurring while minor was 15 or 16), the DCA found that the Sixth Amendment right to a jury did not preclude the juvenile court of determining the age at which the minor committed the alleged crime. (*People v. Superior Court (Carl W.)* (1975) 15 Cal.3d 271, 274; see *People v. Figueroa* (1993) 20 Cal.App.4th 65, 72, fn. 2.)

***People v. Garcia* (2019) 30 Cal.App.5th 316 (2nd DCA).**

17-year-old minor convicted of multiple sex crimes in 1996, and was sentenced to 94-years-to-life in prison. In 2012 minor petitioned under *habeas* claiming that his nonhomicide sentence violated the Eighth Amendment (“de facto LWOP”), citing *Miller v. Alabama* (2012) 567 U.S.

460. Trial court granted petition and re-sentenced to 50-years-to-life. Now, minor (with AG agreement) contends he's entitled to transfer hearing pursuant to Prop. 57 as his case was not final on appeal.

The DCA clarified that "there are key differences between a Proposition 57 transfer hearing and the analogous fitness hearing under prior law. Most notably, Proposition 57 shifts the burden of proof in the hearing. Under prior law, the juvenile court was bound by a rebuttable presumption that the defendant was not fit for the juvenile court system, whereas under current law there is no such presumption. (Citation.) In addition, the court at appellant's fitness hearing could not retain jurisdiction unless it found him fit for juvenile court under all five criteria. (Citation.) In a transfer hearing under current law, the court must consider all five factors, but has broad discretion in how to weigh them. (Citation.)"

The DCA conditionally reversed the convictions and remanded for a transfer hearing. Note: If the minor is thereafter transferred to criminal court, the criminal court is to conduct a resentencing consistent with the direction of *People v. Contreras* (2018) 4 Cal.5th 349, 383, as the 50-years-to-life sentence violated the Eighth Amendment.

***People v. Hargis* (2019) 33 Cal.App.5th 199 (5th DCA).**

Court examined the "interplay among remand orders, changes in the law, and finality of judgments" in determining minor entitled to a transfer hearing, and, dependent on that hearing, a hearing in which the trial court could exercise its discretion regarding whether or not to strike a firearm enhancement. Minor initially direct-filed to criminal court, found guilty at trial, and sentenced to 16 months plus 57 years-to-life in prison. After appeal his case was remanded for a *Franklin* hearing, and while that was pending Prop. 57 passed. Meanwhile, as of January, 2018, SB 620 amended certain firearm statutes to permit the trial court to exercise 1385 discretion in perhaps striking that enhancement. Post-*Lara*, the DCA readily found that minor was entitled to a transfer hearing, and conditionally reversed the conviction and sentence.

"When conducting said hearing, the juvenile court shall, to the extent possible, treat the matter as though the prosecutor had originally filed a juvenile petition in juvenile court and had then moved to transfer defendant's cause to a court of criminal (adult) jurisdiction. (Citation.) If, after conducting the juvenile transfer hearing, the juvenile court finds it would *not* have transferred defendant to a court of criminal (adult) jurisdiction, it shall treat defendant's convictions as juvenile adjudications; exercise its discretion under Penal Code section 12022.53(h), as amended by Senate Bill No. 620, and impose an appropriate disposition within

its discretion. If, after conducting the juvenile transfer hearing, the court determines it would have transferred defendant to a court of criminal (adult) jurisdiction because he is not a fit and proper subject to be dealt with under the juvenile court law, then defendant's convictions and sentence shall be reinstated."

Interestingly, the DCA found that while minor's case was not final when Prop. 57 went into effect, his adult sentence was already final at the time SB 620 went into effect. So, if the case is kept in juvenile court he'd be entitled to a dispositional hearing, i.e., re-sentencing, but if it is transferred to adult court he is not entitled to have the trial court exercise its discretion under that enactment.

SB 1391 Cases: Found Constitutional

People v. Superior Court (T.D.) (8/5/19) 38 Cal.App.5th 360 [5th DCA].

SB 1391 found consistent with and furthers the intent of Prop 57: “The Act's overriding purpose was to channel more juvenile offenders into the juvenile justice system and to have a juvenile court judge make the transfer decision if one was to be made, not to set in stone the age parameters for such a determination. That Proposition 57 permitted the transfer of 14-and 15-year-olds to criminal court in some circumstances does not mean precluding such transfer is inconsistent with and/or does not further the intent of the Act, particularly when we take into account that voters desired the Act to ‘be broadly construed to accomplish its purposes.’ (Voter Information Guide, *supra*, text of Prop. 57, § 5, p. 145.)”

[Moreover,] “Proposition 57's remaining purposes and intents — to ‘[p]rotect and enhance public safety,’ ‘[s]ave money by reducing wasteful spending on prisons,’ and ‘[p]revent federal courts from indiscriminately releasing prisoners’ (Voter Information Guide, *supra*, text of Prop. 57, § 2, p. 141) — are also furthered by Senate Bill No. 1391. More minors kept within the juvenile justice system means fewer prisoners. Additionally, we cannot say keeping virtually all 14-and 15-year-olds in a system that provides treatment and services to achieve rehabilitation fails to enhance public safety.” (*T.D.*, at p. 374.)

DISSENT: SB 1391 conflicts with the enumerated intent that a judge—not prosecutor, nor legislature—decide whether juveniles should be tried in adult court. Interpreting that Prop. 57 only intended to remove power from prosecutor, while largely ignoring the intent to *require* that power be exercised by a judge, is simply not supported by the language of Prop. 57. As for the goal of Prop. 57, “[it] may have intended to reduce the number of youths to be prosecuted as adults ... but only up to a point.” Prop. 57 “sought to find the balancing point of several disparate objectives, including enhancing public safety, saving money, and emphasizing rehabilitation.” And, “there is ‘nothing in [Prop. 57] to suggest voters intended the Act to extend as broadly as possible for one purpose, but not for another.’ (Citation.)” Finally, by making some “affirmative statutory tweaks” the drafters [and therefore the voters] understood the intent to preserve permitting some 14-and-15-year-olds to be tried as adults.

People v. Superior Court (I.R.); (8/5/19) 38 Cal.App.5th 383 [5th DCA]. [Echoes T.D.]

People v. Superior Court (A.C.) 34 Cal.App.5th 994 [1st DCA].

Bill was consistent with the express and implied intent of Prop 57. Prop. 57 changed procedure for prosecuting minors in criminal court, but did not expand—nor solidify—the class of juvenile offenders subject to that procedure.

People v. Superior Court (K.L.) (2019) 36 Cal.App.5th 529 [3rd DCA].

History, purpose and intent of Prop 57 in context of SB 1391 constitutionality challenge demonstrated that the statute did not conflict with the voter initiative. “S.B. 1391 does not conflict with Proposition 57 but advances its stated intent and purpose to reduce the number of youths to be tried in adult court, reduce the number of incarcerated persons in state prisons, and emphasize rehabilitation for juveniles.” (*Id.* at p. 564.)

People v. Superior Court (S.L.); (9/20/19) WL 4564858 [6th DCA]

Majority agrees with “well-reasoned” holdings of aforementioned decisions. (*Id.* at p. 3.)

DISSENT: SB 1391 provisions not within the scope of amending authority granted by Prop. 57.

“Substantively, [Prop.] 57 proscribes criminal prosecution of juvenile offenders, with two exceptions: (1) when a juvenile commits an offense at age 16 or older; and (2) when certain serious offenses (such as murder, rape, or arson) are committed at age 14 or 15. Offenders in those two categories are subject to criminal prosecution at the juvenile court's discretion based on specified criteria (criminal sophistication, delinquency history, amenability to rehabilitation, and the like). (Citation.) The intent of the initiative is readily apparent: To ensure that juvenile cases are handled in juvenile courts, while allowing for prosecution in certain situations if a judge agrees, based on specified criteria, that public safety necessitates adult treatment. That multidimensional approach mirrors the relevant statements of intent contained in [Prop.] 57: To protect and enhance public safety; to emphasize rehabilitation for juveniles; and to allow a judge to decide whether an eligible juvenile should be tried in adult court. (Citation.)

[SB] 1391 simply eliminated the second category of juvenile offenders who can be criminally prosecuted. Under [SB] 1391, 14-and 15-year-olds who commit serious offenses generally cannot be transferred to adult court. By eliminating the exception entirely, the Legislature has undermined one of the initiative's intended methods of protecting public safety. Whether taking 14-and 15-year-olds who have committed serious offenses out of juvenile court is the best way to promote public safety can be fairly debated. But what cannot reasonably be debated is that the voters wanted to do it that way. The Legislature's removal of one mechanism the voters preserved to protect public safety is contrary to the intent of the initiative.

Through [SB] 1391, the Legislature also unilaterally stripped the prosecutor's power to seek and the juvenile court's discretion to consider criminal prosecution for certain 14-and 15-year-olds. [Prop.] 57 ensured that a judge would determine whether qualifying juveniles should be tried in criminal court. After [SB] 1391, judges no longer have that authority. The Legislature has taken away from prosecutors and courts a power that the electorate had chosen to provide. (Citation.)” (*Id.* at p. 6.)

B.M. v. Superior Court of Riverside County (10/1/19) WL 4853122 [4th DCA]

Minor was accused of an arson-murder. The DA petitioned for a transfer to adult court pursuant to Proposition 57. The juvenile court found SB 1391 invalid, prompting minor’s writ. The DCA affirmed SB 1391. DCA framed issue as transfer hearing was a *means* to further the purpose of limiting prosecutorial discretion, and Prop. 57 furthers that express purpose. Proposition 57 was “clearly intended to limit prosecutorial power, increase rehabilitative opportunities for youth, and reduce prison spending” “Given [its] stated goals and historical context, we think SB 1391 is precisely the type of rehabilitation-based legislation the voters had in mind when they allowed for future amendments.”

DISSENT: would have found SB 1391 invalid because it eliminates something affirmatively given prosecutors. The voters’ intent was to “modestly reform juvenile justice,” not to wholesale eliminate an entire class of prosecutions. Criticizes majority for ignoring the clear and unambiguous language of Prop. 57, which controls before any other effort to ascertain the electorate’s intent. Moreover, the absence of such exclusion in the initiative is evidence of voters’ intent not to eliminate 14-and-15-year-olds. Finally, SB 1391 raises a separation of power problem, in that case law implies the court’s fundamental power to initiate and conduct fitness hearings, wholly independent of a prosecutor’s power to request it (i.e., prosecutor could “informally invite” the court to exercise such discretion).

SB 1391 Cases: Found Unconstitutional

O.G. v. Superior Court of Ventura County; (9/30/19) WL 4744688 [2nd DCA]

In rebuke to the DCA deciding otherwise, the Court ruled that “[t]he Legislature cannot overrule the electorate. ... Under the guise of ‘amendment,’ an initiative may not be ‘annulled’ by the Legislature. Consistent with precedent, we ‘jealously guard’ the law as declared by the voters.” Case involved 15-year-old gang member alleged to have killed two people on separate occasions, and because of SB 1391, “notwithstanding a body count, the facts and circumstances

concerning the commission of the offenses, or the background and history of the perpetrator, a 15-year-old alleged murderer must be dealt with in the juvenile court.”

The Court referenced the other DCA decisions and sized up the conflict accordingly: those holdings are “inconsistent [with the intent of Prop. 57] as a matter of law.” Citing the dissent in T.D. and S.L., and relying upon the Cal. Supreme Court decision on *People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 571, the DCA asked “whether it prohibits what the initiative authorizes, or authorizes what the initiative prohibits.” (Citing *Pearson*.) The DCA concluded that initiative *authorized* the possible criminal prosecution of a 15-year-old alleged murderer and SB 1391 *precludes* this possibility. Thus, as a jurisdictional change that attempts to overrule Prop. 57 it violates the well-settled rule against the legislature enacting laws that thwart the initiative process.

The DCA dismissed the opinions of the other courts that upheld SB 1391 noting that the reviews of the spirit and intent of Prop. 57 were largely irrelevant and was focusing “on the trees and not the forest.” Prop. 57 permits adult prosecution and SB 1391 precludes such prosecution. Thus, it is unconstitutional.