

Date of Hearing: April 5, 2022

Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 2361 (Mia Bonta) – As Amended March 31, 2022

**SUMMARY:** Requires the court to find that the minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court in order to transfer the minor to a court of criminal jurisdiction. Specifically, **this bill:**

- 1) Requires the finding that the minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court to be supported by clear and convincing evidence.
- 2) Requires the transfer order to state the reasons supporting the court's finding that the minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court.

**EXISTING LAW:**

- 1) Provides that children under the age of 14 are incapable of committing crimes unless there is clear proof that at the time of committing the act charged against them they knew its wrongfulness. (Pen. Code, § 26.)
- 2) Provides that, any minor who is between 12 and 17 years of age that violates any law of this state or of the United States or any ordinance of any city or county other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, and may be adjudged to be a ward of the court. (Welf. & Inst. Code, § 602.)
- 3) States that no court shall have jurisdiction to conduct a preliminary examination or to try the criminal case of any person who was under the age of 18 years at the time of the alleged commission of the crime unless the matter has first been submitted to the juvenile court and the juvenile court has made an order directing that the person be prosecuted under the general law. (Welf. & Inst. Code, § 603.)
- 4) Authorizes the prosecutor to make a motion to transfer a minor who is 16 years of age or older from juvenile court to a court of criminal jurisdiction in any case in which the minor is alleged to have committed a felony or other specified offense. (Welf. & Inst. Code, § 707, subd. (a)(1).)
- 5) Authorizes the prosecutor to make a motion to transfer a minor who committed a felony or other specified offense from juvenile court to a court of criminal jurisdiction if the offense was committed while the minor was 14 or 15 years of age or older but the minor was not apprehended prior to the end of juvenile court jurisdiction. (Welf. & Inst. Code, § 707, subd. (a)(2).)

- 6) Requires, upon the motion of the prosecutor, the juvenile court to order the probation officer to submit a report on the behavioral patterns and social history of the minor. (Welf. & Inst. Code, § 707, subd. (a)(1) &(2).)
- 7) States that, following submission and consideration of the report, and of any other relevant evidence that the minor may wish to submit, the juvenile court shall decide whether the minor should be transferred to a court of criminal jurisdiction. (Welf. & Inst. Code, § 707, subd. (a)(3).)
- 8) Requires the juvenile court, in making its decision, to consider specified criteria including:
  - a) The degree of criminal sophistication exhibited by the minor. 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) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction. The juvenile court may give weight to any relevant factor, including, but not limited to, the minor's potential to grow and mature;
  - c) The minor's previous delinquent history. 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) Success of previous attempts by the juvenile court to rehabilitate the minor. 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; and,
  - e) The circumstances and gravity of the offense alleged to have been committed by the minor. 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. (Welf. & Inst. Code, § 707, subd. (a)(3)(A)-(E).)
- 9) Requires, if the juvenile court orders a transfer to a court of criminal jurisdiction, the court to recite the basis for its decision in an order entered upon the minutes. (Welf. & Inst. Code, § 707, subd. (a)(3).)
- 10) Authorizes, if the minor's case is transferred from juvenile court to a court of criminal jurisdiction, the prosecutor to file an accusatory pleading against the minor in a court of criminal jurisdiction. The case shall proceed from that point according to the laws applicable to a criminal case. (Welf. & Inst. Code, § 707.1.)

- 11) Allows a court to commit a minor to the Division of Juvenile Justice (DJJ), within the California Department of Corrections and Rehabilitation (CDCR), if the minor committed a specified serious, violent, or sex offense and has been the subject of a motion filed to transfer the minor to the jurisdiction of the criminal court. This provision will remain in effect until the final closure of the DJJ. (Welf. & Inst. Code, § 731.)
- 12) Provides that, a person whose case originated in juvenile court but who was sentenced in criminal court shall not serve their sentence in a juvenile facility but may remain in the juvenile facility until transferred to serve their sentence in an adult facility. (Welf. & Inst. Code, § 208.5.)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, “The transfer of a juvenile to adult court is an extremely serious decision with a lifetime of consequences, and one which should not be taken lightly. Over the past decade, our knowledge of adolescent neuroscience has advanced by leaps and bounds, in particular demonstrating the deficiencies in juvenile decision-making capacity while their young brains continue to develop. In alignment with this science, California has adopted evidence-based proposals to give youth who commit certain crimes a path to rehabilitation and a second chance. However, youth of color continue to be disproportionately victims of structural racism in the criminal justice system. In 2020, 96% of juvenile transfers to adult court were youth of color. This is in part to the lack of guidance provided to judges making this critical decision.

“AB 2361 will reduce arbitrary determinations surrounding the transfer of juveniles to adult court by establishing that the court’s decision to transfer a juvenile must be based on sufficient evidence. Rehabilitation is the way forward, and that includes giving juveniles who have made a mistake the opportunity to create a new future as they prepare to reenter our society as adults.”

- 2) **Jurisdiction of the Juvenile Court:** As a general rule, any person between the age of 12 and 17, inclusive, who commits a crime falls within the jurisdiction of the juvenile court. (Welf. & Inst. Code, § 602.) This extends to a youth alleged to have committed a crime before their 18th birthday, even if they were an adult at the time of arrest or commencement of proceedings. (Welf. & Inst. Code, § 603.) For example, if someone commits a crime at age 17, but it is not discovered or tried until the person is 20, the person can still be tried in juvenile court. The jurisdiction of the juvenile court continues until the youth is 23 years old, unless the youth would have, in criminal court, faced a sentence of 7 years or more, in which case the juvenile court’s jurisdiction continues until the youth turns 25. (Welf. & Inst. Code, § 607.)

The creation of the juvenile court, now over 100 years old, was rooted in the idea that adolescents, who are not fully developed or mature, are less culpable than adults. Accordingly, the focus of the juvenile court was supposed to be rehabilitation, not punishment. (See e.g., *In re Gault* (1967) 387 U.S. 1, 15-16.) The purpose of the juvenile law is to provide for the protection and safety of the public and each minor under the jurisdiction of the court and to preserve and strengthen family ties when possible. (Welf. & Inst. Code, §

202, subd. (a).) Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct receive care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances. This may include punishment that is consistent with rehabilitative objectives. (Welf. & Inst. Code, § 202, subd. (b).) The juvenile court has a wide range of options available for placing its wards, including probation, placement in a relative's home, foster home, licensed community care facility, or group home, and commitment to “a juvenile home, ranch, camp, or forestry camp” or “the county juvenile hall.” (Welf. & Inst. Code, §§ 727, subd. (a); 730, subd. (a)(1).)

- 3) **Transfers from Juvenile Court to Adult Criminal Court:** Historically, California has handled offenses committed by youth under age 16 in the juvenile system. The Arnold-Kennick Juvenile Court Act, enacted in 1961, established 16 as the minimum age for which a minor could be transferred from juvenile court to adult criminal court. Over 30 years later, AB 560 (Peace), Chapter 453, Statutes of 1994, lowered the age at which a minor could be transferred to adult criminal court from 16 to 14 years of age. In 2000, Proposition 21 again dramatically shifted California’s criminal justice policies. Amongst other severe punishments, Proposition 21 required adult trial for juveniles 14 or older charged with murder or violent sex offenses, authorized a prosecutor to file charges against a juvenile offender directly in criminal court for specified felonies, and prohibited the sealing of certain juvenile records. (*Ballot Pamp., Prim. Elec.* (Mar. 7, 2000), Text of Prop. 21, at p. 45 *et seq.* Available at: <https://vigarchive.sos.ca.gov/2000/primary/home.htm>.)

Subsequent to Proposition 21, a series of U.S. Supreme Court cases involving juvenile defendants recognized the inherent difference between juveniles and adults for purposes of sentencing, relying in part on research on brain and adolescent development. (See *Roper v. Simmons* (2005) 543 U.S. 551; *Graham v. Florida* (2010) 560 U.S. 48; *J.D.B. v. North Carolina* (2011) 564 U.S. 261; and *Miller v. Alabama* (2012) 567 U.S. 460.) The Supreme Court summarized those differences in *Miller*:

*Roper* and *Graham* establish that children are constitutionally different from adults for purposes of sentencing. Because juveniles have diminished culpability and greater prospects for reform, we explained, they are less deserving of the most severe punishments. Those cases relied on three significant gaps between juveniles and adults. First, children have a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking. Second, children are more vulnerable to negative influences and outside pressures, including from their family and peers; they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings. And third, a child’s character is not as “well formed” as an adult’s; his traits are “less fixed” and his actions less likely to be “evidence of irretrievable depravity.”

(*Miller, supra*, 567 U.S. at p. 570, citations omitted.) This body of case law and the research relied upon in these cases prompted the passage of several juvenile justice reform measures in California. In 2016, the voters passed Proposition 57 which, among other things, eliminated the ability of a prosecutor to file charges against a juvenile directly in criminal

court and changed the requirement that juveniles 14 or older charged with certain serious offences are to be tried in adult court. Notably, Proposition 57 required youth age 14 or 15 to have a fitness hearing in juvenile court before they can be transferred to adult court. (See, *Voter Information Guide for 2016*, Available at: <https://vig.cdn.sos.ca.gov/2016/general/en/pdf/complete-vig.pdf>.)

- 4) **Impact of Transfer Orders on Youth:** Youth transferred to adult court may have worse post-release outcomes than youth who receive treatment in the juvenile system, which is inconsistent with the goal of improving public safety. As has been noted by the California Supreme Court, the certification of a juvenile offender to an adult court has been accurately characterized as “the worst punishment the juvenile system is empowered to inflict.” (Separating the Criminal from the Delinquent: Due Process in Certification Procedure (1967) 40 So. Cal. L. Rev. 158, 162; *People v. Ramona* (1985) 37 Cal.3d 802, 810.) The Centers for Disease Control has also concluded: “[T]ransfer policies have generally resulted in increased arrest for subsequent crimes, including violent crime, among youth who were transferred compared with those retained in the juvenile justice system. To the extent that transfer policies are implemented to reduce violent or other criminal behavior, available evidence indicates that they do more harm than good.” (Robert Hahn et al., Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force, Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report, at p. 9 (Nov. 30, 2007).)

Further, there is a disparate impact of transfer orders on youth of color. In California, Black and Latino youth are significantly more likely than white youth to face adult court prosecution. (*Futures Denied: Why California Should Not Prosecute 14- and 15-year-olds as Adults*, Human Rights Watch and Haywood W. Burns Institute, at pp. 14-16 (2018).) The California Department of Justice (DOJ) publishes an annual report on juvenile justice in the state, including the number of arrests, referrals to probation departments, petitions filed, and transfers from juvenile to adult criminal court. The most recent report includes data from 2020. The data shows that, of the juveniles tried in adult court in 2020, 71.1% were convicted, of these 71.9% were sentenced to adult prison or the Division of Juvenile Justice (DJJ), 15.6% received probation with jail, 6.3% received jail, and 6.3% received other sentences. No white juveniles were sentenced to adult prison or DJJ. Of all of the adult-level court dispositions received, 4.4% were white, 71.1% were Hispanic, 20% were black and 4.4% were from other race/ethnic group. On the other hand, the majority of formal juvenile court hearings resulted in the juvenile being made a ward of the court (56.4%) and most wards were allowed to go home under the supervision of the probation department (53.7%). (*Juvenile Justice in California 2020*, California Department of Justice, at p. iii. Available at: <https://data-openjustice.doj.ca.gov/sites/default/files/2021-06/Juvenile%20Justice%20In%20CA%202020.pdf> [as of March 18, 2022].)

- 5) **Legal Criteria for Transfers to Adult Criminal Court:** Current law allows the juvenile court, on motion of the prosecution, to transfer minors aged 14 to 17 years old, who are alleged to have committed specified offenses, to adult court if the juvenile court determines, following a hearing, that the youth should be transferred to a court of criminal jurisdiction. (Welf. & Inst. Code, §707, subd. (a)(1)-(3).) The prosecution bears the burden of proving the youth should be transferred to adult court by a preponderance of the evidence. (Cal. Rules of Ct., rule 5.770, subd. (b)(2); see also Cal. Rules of Ct., rule 5.770, Advisory Comm. Comment.)

Upon the prosecutor filing a motion to transfer the minor from juvenile court to adult criminal court, the juvenile court orders the probation officer to submit a report on the behavioral patterns and social history of the minor. (Welf. & Inst. Code, §707, subd. (a).) The prosecutor and the minor may submit additional relevant information to aid the court in evaluating a juvenile's fitness to remain in juvenile court. (*Ibid.*)

A minor is not required to establish innocence in order to show amenability to the juvenile court system, and the fact that a minor did commit the charged offense does not automatically require a finding of unfitness. (*People v. Superior Court (Jones)* (1998) 18 Cal.4th 667, 682.)

Rather, the dispositive question at a transfer hearing is the minor's amenability to treatment through the facilities available to the juvenile court. (*Jimmy H. v. Superior Court* (1970) 3 Cal.3d 709, 714; see also *People v. Chi Ko Wong* (1976) 18 Cal.3d 698, 717 [holding that the issue at a transfer hearing "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"]; *J.N. v. Superior Court* (2018) 23 Cal.App.5th 706, 714 ["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."].) There is no requirement that the court find exactly how a minor will benefit from being transferred to adult court.

In making its decision, the court considers five enumerated criteria: (1) the degree of criminal sophistication; (2) whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction; (3) the minor's previous delinquent history; (4) the success of previous rehabilitation attempts by the juvenile court; and (5) the gravity of the offense alleged in the petition to have been committed by the minor. (*Ibid.*; *Bruce M. v. Superior Court* (1969) 270 Cal.App.2d 566, 573.) A transfer order must be based on evidence and supported by findings addressed to each of the criteria. Under the current statutory scheme, appellate courts have held that juvenile courts may weight each factor however the court wishes. (See *C.S. v. Superior Court* (2018) 29 Cal.App.5th 1009, 1034-35.)

Ultimately, the decision rests in the sound discretion of the juvenile court. (*People v. Yeager* (1961) 55 Cal.2d 374, 389.) Even expert testimony indicating a juvenile's amenability to treatment offered by the juvenile facilities that weighs heavily in the youth's favor is not conclusive. (*Bruce M. v. Superior Court*, *supra*, 270 Cal.App.2d at p. 572; Welf. & Inst. Code, § 707.) This has resulted in a youth being transferred to criminal court even though the juvenile judge believes the youth is amenable to rehabilitation through the juvenile court. Absent statutory guidance, the appellate courts have been unwilling to find that youth amenable to rehabilitation must be retained in juvenile court. (See *Kevin P. v. Superior Court* (2020) 57 Cal.App.5th 173, 201.)

- 6) **Need for this Bill:** This bill does three things: (1) requires the court to make a finding that the minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court; (2) sets a clear legal standard for the transfer of youth to adult criminal court; and, (3) ensures meaningful appellate review of the court's transfer order.

Amenability Requirement: The juvenile court must make the transfer decision based on the five criteria listed above. The court makes its decision based on a totality of the circumstances not any one factor, and the factors can be weighed in any way the court wants. Thus, juveniles have been sent to adult court even in cases where the juvenile court found that the minor could have been rehabilitated under the jurisdiction of the juvenile court.

This bill does not eliminate the requirement that the court weigh the five factors. This bill would further require that the court find that the minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court in order to transfer the minor to a court of criminal jurisdiction.

Clear Legal Standard: As far back as the 1970's some commentators have suggested that there ought to be a presumption of fitness for treatment as a juvenile. (Cal. Juvenile Court Practice (Cont. Ed. Bar 1968) § 137, p. 126; see also, *Juvenile Justice in California: A Re-evaluation* (1967) 19 Hastings L. J. 47, 96.) Under existing law, the prosecution bears the burden of proof to demonstrate, by a preponderance of the evidence that the youth "should be" transferred to adult court. (Cal. Rules of Ct., rule 5.770, subd. (b)(2); see also Cal. Rules of Ct., rule 5.770, Advisory Comm. Comment.)

The "preponderance of the evidence standard" is met if the trier of fact (judge or jury) believes the evidence shows that a fact is more likely than not—more than 50% likely to be—true. (*Braud v. Kinchen* (1975) 310 So.2d 657.) Accordingly, the prosecution is only required to prove that it is more likely than not that the youth should be transferred, in order for a youth to be taken out of the jurisdiction of the juvenile court and sent to adult criminal court. This bill would require that the court's finding that the minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court be supported by clear and convincing evidence.

"Clear and convincing" means that the evidence is highly and substantially more likely to be true than untrue; the trier of fact must have an abiding conviction that the truth of the factual contention is highly probable. (*Colorado v. New Mexico* (1984) 467 U.S. 310.) It is a higher standard than preponderance of the evidence. Generally, the "clear and convincing evidence" standard is reserved for legal actions where something more than money is at stake, such as civil liberties. Examples include restraining orders, dependency cases (loss of parental rights), probate of wills, and conservatorships. (See, e.g., *Conservatorship of Wendland* (2001) 26 Cal. 4th 519; *Santosky v. Kramer* (1982) 455 U.S. 745.)

Should a higher legal standard be required given the significant consequences of trying a minor under in adult criminal court?

Meaningful Appellate Review: Prior to 2021, juveniles did not have a right to appeal a transfer order. (*People v. Chi Ko Wong* (1976) 18 Cal.3d 698.) AB 624 (Bauer-Kahan), Chapter 195, Statutes of 2021, made an order transferring a minor from a juvenile court to a court of criminal jurisdiction subject to appeal.

The standard of review "is the compass that guides the appellate court to its decision." (*People v. Jackson* (2005) 128 Cal.App.4th 1009, 1018.) On appeal, transfer orders are

reviewed by the appellate court under a “substantial evidence” standard. (*N. v. Superior Court* (2018) 23 Cal.App.5th 706, 714.) “Substantial evidence” means that there is enough relevant evidence as a reasonable mind might accept as adequate to support a conclusion. (*Richardson v. Perales* (1971) 402 U.S. 389.) In other words, the question before the court on appeal is whether, after viewing the evidence in light most favorable to the prosecution, whether *any* rational trier of fact could have found the same way as the trial court. (*People v. Johnson* (1980) 26 Cal.3d 557, 576.) A defendant is almost certain to lose under the deferential substantial evidence standard. (*People v. Jackson, supra*, 128 Cal.App.4th at p. 1019.) Therefore, it is important that the parties understand all of the reasoning and facts supporting the juvenile court’s transfer order, in order to successfully appeal the transfer order.

Existing law only requires the court to state its finding to each of the five factors, enumerated above, on the record. If the court orders a transfer or jurisdiction to criminal court, it must recite the basis for its decision in an order entered in the minutes. (Welf. & Inst. Code, § 707, subd. (a)(1); Cal. Rules of Court, rule 5.770 (c).) Courts are only required to give a small degree of their reasoning, neither a formal statement nor conventional findings of fact are required. (*Francisco R. v. Superior Court* (1980) 114 Cal.3d. 232, 237.)

This bill does not change this requirement in regard to the five factors; however, this bill would require the court to state the reasons supporting the court’s finding that the minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court in its transfer order. In so doing, this bill encourages meaningful appellate review of the transfer order. Including information about the reasoning of the lower court in the order could help the court of appeal make a proper determination as to whether there was substantial evidence to transfer the minor to adult court, and could provide minors with more information to identify and articulate arguable appellate issues.

In short, this bill ensures that youth amenable to treatment and rehabilitation will be retained in juvenile court, reduces arbitrary transfer determinations that are not supported by clear and convincing evidence, and will allow appellate courts to more effectively to review the lower court’s findings to determine whether the transfer order was based on sufficient evidence.

- 7) **Closure of DJJ’s Impact on Transfers to Adult Criminal Court:** With his 2020-2021 revised budget proposal, released in May 2020, Governor Newsom stated his intention to close DJJ entirely and shift responsibility for all youth held in custody to the state’s 58 counties. (*California’s 2021-21 May Revision to the Governor’s Budget* (May 14, 2020) at p. 88. Available at: <http://www.ebudget.ca.gov/2020-21/pdf/Revised/BudgetSummary/FullBudgetSummary.pdf>.)

In September 2020, Governor Newsom signed SB 823 (Committee on Budget and Fiscal Review), Chapter 337, Statutes of 2020, which operationalized the realignment of the DJJ to the counties. The Legislature passed SB 823 with a stated intention of protecting against transfer of youth to the adult system once DJJ was no longer available. In SB 832, the Legislature specifically stated its intent that “the administration for counties to use evidence based and promising practices and programs that improve the outcomes of youth and public safety, *reduce the transfer of youth into the adult criminal justice system*, ensure that dispositions are in the least restrictive appropriate environment, reduce and then eliminate



racial and ethnic disparities, and reduce the use of confinement in the juvenile justice system by utilizing community-based responses and interventions.”

In May 2021, Governor Newsom signed SB 92 (Committee on Budget and Fiscal Review), Chapter 18, Statutes of 2021, which sets a firm closure date for DJJ on June 30, 2023, and requires the DJJ Director to develop a plan for the transfer of jurisdiction of youth remaining at DJJ as of that date. SB 92 also authorizes counties to establish secure youth treatment facilities for certain youth who are 14 years of age or older and found to be a ward of the court based on an offense that could result in a transfer to criminal court. This will allow these youths to remain under the jurisdiction of the juvenile court, and should reduce transfers to adult court.

This bill is consistent with Legislative intent to ensure that the youth transfers to adult criminal court are reduced in the wake of DJJ’s closure.

- 8) **Argument in Support:** According to the *Ella Baker Center for Human Rights*, “In the past decade alone, California has adopted evidence-based proposals to give youth who commit certain crimes a path to rehabilitation and a second chance, including SB 382 (Lara, Chapter 234, Statutes of 2015), SB 1391 (Lara, Chapter 1012, Statutes of 2018), and Proposition 57 (2016). However, youth of color continue to be disproportionately victims of structural racism in the criminal justice system. This is due in part to the lack of guidance provided to judges making this critical decision.

Over 50 years ago, the California Supreme Court held that “the dispositive question [at a transfer hearing] is the minor’s amenability to treatment through the facilities available to the juvenile court.”<sup>[1]</sup> Nonetheless, there is no language in the current statute that requires the juvenile court to make a finding that a juvenile is unamenable to rehabilitation before a juvenile may be transferred. The courts lack sufficient guidance in determining how to exercise this tremendously consequential discretion. As a result, youth who are amenable to rehabilitation may still be transferred to adult court. Moreover, the lack of clarity in the statute impedes meaningful appellate review.

“The Legislature has previously noted the racial, ethnic and geographic disparities in judicial decision-making regarding which minors are to be sent to adult court rather than remain in juvenile court. The Legislature has also recognized that youth transferred to adult court have worse post-release outcomes than youth who receive treatment in the juvenile system, and are more likely to commit new crimes in the future, which is inconsistent with the goal of improving public safety.

“This is why AB 2361 is so important. It is essential that juvenile court judges and the appellate courts have the benefit of a clear standard by which juvenile judges may weigh the evidence at a transfer hearing and make the most appropriate determination.”

- 9) **Prior Legislation:**

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<sup>1</sup> *Jimmy H. v. Superior Court* (1970) 3 Cal.3d 709, 714.

- a) AB 624 (Bauer-Kahan), Chapter 195, Statutes of 2021, made an order transferring a minor from a juvenile court to a court of criminal jurisdiction subject to appeal, as specified.
- b) AB 1423 (Wicks), Chapter 583, Statutes of 2019, created a mechanism for the return of a case back to the juvenile court from the criminal court under certain circumstances.
- c) AB 2865 (Wicks), of the 2019-2020 Legislative Session, would have required a court to find that a minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court in order to find that the minor should be transferred to a court of criminal jurisdiction. AB 2865 was held in this Committee without a hearing.
- d) SB 439 (Mitchell), Chapter 1006, Statutes of 2018, prohibited the prosecution of a minor under the age of 12, unless the minor is alleged to have committed specified violent crimes.
- e) SB 1391 (Lara), Chapter 1012, Statutes of 2018, repealed the authority of a district attorney to make a motion to transfer a minor from juvenile court to a court of criminal jurisdiction in a case in specified cases, unless the individual was not apprehended prior to the end of juvenile court jurisdiction.
- f) SB 382 (Lara), Chapter 382, Statutes of 2015, enumerated certain factors that may be given weight within each of the criteria to be determined by a court in order to find that the minor should be transferred to a court of criminal jurisdiction.
- g) SB 1151 (Kuehl), of the 2003-2004 Legislative Session, would have clarified the definition of the “circumstances and gravity of the offense” for purposes of evaluating the fitness of a minor for juvenile court jurisdiction. SB 1151 was vetoed.
- h) AB 560 (Peace), Chapter 453, Statutes of 1994, lowered the age from 16 to 14 at which a juvenile could be transferred to adult criminal court and be tried as an adult for committing certain crimes.

**REGISTERED SUPPORT / OPPOSITION:****Support**

ACLU California Action  
Alameda County Public Defender's Office  
Anti-recidivism Coalition  
California Attorneys for Criminal Justice  
California Public Defenders Association  
Center on Juvenile and Criminal Justice  
Ceres Policy Research  
Communities United for Restorative Youth Justice (CURYJ)  
East Bay Community Law Center  
Ella Baker Center for Human Rights  
Fresh Lifelines for Youth  
Human Rights Watch

Juvenile and Children's Advocacy Project  
Juvenile Law Center  
Milpa (motivating Individual Leadership for Public Advancement)  
National Center for Lesbian Rights  
National Center for Youth Law  
Pacific Juvenile Defender Center  
Silicon Valley De-bug

2 Individuals

**Opposition**

None submitted.

**Analysis Prepared by:** Liah Burnley / PUB. S. / (916) 319-3744