



Office of the District Attorney

Alameda County

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SPECIAL DIRECTIVE 23-02

JUVENILE JUSTICE - TRANSFER TO ADULT COURT AND STRIKES

TO: DEPUTY DISTRICT ATTORNEYS, JUVENILE JUSTICE UNIT

FROM: PAMELA Y. PRICE
District Attorney

DATE: MAY 15, 2023

EFFECTIVE DATE: June 9, 2023.

DIRECTIVE

1. PROHIBITING TRANSFER OF CHILDREN¹: As a general practice, the Alameda County District Attorney's Office will no longer move to transfer children to the adult court system.

1.1. In extraordinary circumstances and in cases involving especially vulnerable victims, adult criminal court may be deemed warranted on a narrowly construed, case-by-case basis.

1.2. If a prosecutor is prosecuting a child and believes a transfer to adult court is appropriate, the prosecutor must obtain prior supervisory approval, defined in section 4 below, to file a motion to transfer the children to adult criminal court. The Deputy shall not file a transfer motion without such prior supervisory approval.

1.3. The prosecutor shall request supervisory approval at the earliest possible opportunity.

2. WITHDRAW PENDING TRANSFER MOTIONS: All pending motions to transfer children to adult court jurisdiction that have not previously been approved by the District Attorney shall be withdrawn at the soonest available court date.

2.1. Prosecutors shall stipulate to any defense counsel's request to advance such proceedings.

¹ Child is defined as a person under age 18.

2.2. Prosecutors may request supervisory approval for an exception to this directive in cases described in section 1 of this policy.

3. TRANSFER APPEALS OR MOTIONS FOR RECONSIDERATION OF TRANSFER

3.1. In an ongoing case, if a child has been transferred to adult criminal court and defense counsel appeals that order or moves for its reconsideration, prosecutors are instructed to stipulate to the defendant's appeal or motion for reconsideration. Prosecutors shall not argue that a child should remain in adult criminal court if defense counsel argues for their case to be heard in juvenile court.

3.2. Prosecutors may seek supervisory approval for exceptions to this directive.

4. SUPERVISORY APPROVAL

4.1. Supervisory approval for transferring a juvenile to adult court requires that:

4.1.1. The prosecutor must obtain approval of the unit's supervisor, and

4.1.2. If approving, the unit supervisor must obtain approval from the supervising Chief Assistant District Attorney, who if approving, must obtain approval from the District Attorney.

4.1.3. Approvals and disapprovals must be noted in the case management case notes, including the rationale for the request (including relevant documentation of any prior conviction), the date of approvals, and identity of the requesting prosecutor, supervisor, and Chief.

5. STRIKE PRIORS: In accordance with Special Directive 23-01:

5.1. Prosecutors shall plead strike priors pursuant to Penal Code sections 667, subdivision (f)(1) and 1170.12, subdivision (d)(1) where there is sufficient evidence to prove the prior beyond a reasonable doubt. However, prosecutors shall seek supervisory approval before charging a case as a three strikes case.

5.2. Absent supervisory approval, prosecutors shall move to dismiss or strike all alleged strike priors pursuant to Penal Code section 1385 in the interest of justice, arguing factors for judicial consideration set forth by California Committee on Revision of the Penal Code (hereinafter "The Committee"), outlined in section II.A.4 of Special Directive 23-01 and again provided in section 5.2.1 of this directive. Supervisory approval is not required to dismiss or withdraw alleged strike priors; however prosecutors shall document in the case management case notes both the rationale for dismissal or withdraw and that they have discussed the rationale with their unit supervisor.

5.2.1. Criteria for Dismissing Enhancements

With respect to motions to dismiss or withdraw allegations, prosecutors shall be guided by the best available research and science on the topic. Guidance can be found within recommendations for evaluating requests to dismiss enhancements in the interest of justice promulgated by the California Committee on Revision of the Penal Code (hereinafter “The Committee”). The California Legislature and Governor Gavin Newsom established the Committee as a first concerted effort in decades to thoroughly examine our state’s criminal laws. The Legislature gave the Committee special data-gathering powers, directing it to study all aspects of criminal law and procedure and to make recommendations to “simplify and rationalize” the state’s Penal Code.

The Committee’s inaugural report² contains ten recommendations for judicial evaluation of requests to dismiss enhancements. Following the Committee’s guidance, we hereby incorporate Recommendation 5, which establishes proposed guidelines for judges when evaluating a request to dismiss enhancements in the “interests of justice” pursuant to Penal Code section 1385. The presumption will be in favor of dismissal or withdrawal when any one of the factors apply.

Factors to consider when seeking dismissal or withdrawal are when:

- The current offense is nonviolent.
- The current offense is connected to mental health issues.
- The enhancement is based on a prior conviction that is over five years old.
- The current offense is connected to prior victimization or childhood trauma.
- Multiple enhancements are alleged in a single case or the total sentence is over 20 years.
- A gun was used but it was inoperable or unloaded.
- Application of the enhancement would result in disparate racial impact.

This list is not exhaustive as there may be factors beyond those listed above where it would be in the interest of justice to dismiss or withdraw an enhancement.

Prosecutors shall consider the “interests of justice” broadly in determining whether an enhancement is appropriate in their case. In determining whether there is sufficient evidence of the existence of a factor to consider, prosecutors should rely on all available credible evidence. If the existence of a factor is in dispute, the prosecutor shall consult with their supervisor to determine whether there is sufficient credible evidence to consider the factor.

² The full report can be accessed at http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2020.pdf.

The presumption can be overcome if there is clear and convincing evidence that dismissal of the enhancement would endanger public safety. If a prosecutor wishes to pursue an enhancement in a case where dismissal or withdrawal is presumed pursuant to The Committee's recommendations, the prosecutor must seek supervisory approval for final individualized determination on whether it is appropriate to pursue the enhancement.

5.3. Prosecutors shall not move to reinstate strike priors that were previously dismissed by a court and shall not use those strike priors in case negotiations.

5.4. Pleas Involving Strikes: Prosecutors shall not require admission to strike priors in plea bargains absent supervisory approval.