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Supreme Court of California
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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA Plaintiff and Respondent, v. MARIO SALVADOR PADILLA Defendant and Respondent	Supreme Court No. S263375 Court of Appeal Case No. B297213 Superior Court No. TA051184

AMICUS CURIAE BRIEF BY PACIFIC JUVENILE DEFENDER CENTER AND INDEPENDENT JUVENILE DEFENDER PROGRAM

The document in its entirety is **1 file.**
This file is **1 of 1.**
This document has a total number of **60 pages.**
This document contains **pages 1-60** of the document.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CODES

RULES OF COURT

PROPOSITIONS AND LEGISLATION

OTHER REFERENCES

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORIA:

I. RESPONDENT'S CONTENTIONS THAT JUVENILE TRANSFER HEARINGS FOR RESENTENCED FORMER MINORS ARE INEFFECTIVE OR UNWIELDLY, AND THAT THE LEGISLATURE AND THE ELECTORATE INTENDED TO DENY SUCH DEFENDANTS THE "POSSIBLE AMELIORATING BENEFITS" OF JUVENILE TRANSFER REFORM, ARE NOT SUPPORTED BY THE EVIDENCE, HISTORY, AND EXPERIENCE OF TRANSFER REFORM

In its Petition, respondent argues that this Court should create a special class of nonfinal cases, including individuals, like appellant, who committed offenses as minors and whose sentences have been vacated because the sentencing court did not consider their youth at the time of sentencing, as constitutionally required by *Miller v. Alabama* (2012) 567 U.S. 460 (*Miller*), and *Montgomery v. Louisiana (2016) 136 S. Ct. 718 (Montgomery)*. Respondent argues Proposition 57 should not apply to such individuals, despite this Court's holding in *People v. Superior Court (Lara)* (2018) 4 Cal.5th 299 that an the "inevitable inference," applies that Proposition 57 applies to every individual to

whom it may constitutionally apply, based upon two reasons. (*Lara*, *supra*, 4 Cal.5th at p. 312.)

First, respondent argues that applying Proposition 57 to former minors, like appellant, whose sentences have been vacated for failure to comply with constitutionally required youth sentencing law, would "lead to awkward results," and "present challenges due to the passage of time." (Petitioner's Opening Brief on the Merits "POBM," at 28.) As set out below, there is nothing "awkward" about correcting an injustice, especially for a minor, and respondent points to no specific "challenge" either the bench or the bar has encountered in conducting such transfer hearings on remand from the Court of Appeal since this Court held, in *Lara*, that Proposition 57 applies to all cases not yet final. As set out below, such hearings have proceeded in the normal course, as this Court predicted would be the case in *Lara*. (*Lara*, *supra*, 4 Cal.5th at p. 313.)

Second, respondent argues, without evidence, that it is "probable" and "reasonable" to assume that the Legislature and the Electorate intended that old, outdated laws concerning juvenile prosecutions and juvenile sentencing would apply at appellant's resentencing, rather than current

law, as reflected in Proposition 57 and this Court's decision in *Lara*. (POBM, at 11.) As set out below, it is neither "probable," nor "reasonable" to assume that the Legislature and the Electorate would not want appellant to be resentenced under current law. Rather, the available evidence concerning efforts by both the Legislature and the Electorate to reform juvenile law, and to address the excesses of the period during which appellant was sent to the adult system, strongly support *Lara's* and *Estrada's* "inevitable inference" that the Electorate intended Proposition 57 to apply to all cases to which it constitutionally could apply, including appellant's case. Indeed, this Court, in *Lara*, observed that language in the text of Proposition 57, regarding its purpose to, "[s]top the revolving door of crime by emphasizing rehabilitation, especially for juveniles," and that, "the act shall be liberally construed to effectuate its purposes," "support the inference that *Estrada*'s inference of retroactivity is not rebutted." (*Lara, supra*, 4 Cal.5th at p. 309. *See also In re Estrada* (1965) 63 Cal.2d 740.)

II. IN *LARA*, THIS COURT PROVIDED A STREAMLINED PROCEDURE FOR PROVIDING A PROPOSITION 57 TRANSFER HEARING TO FORMER MINORS WHOSE CASES ARE NOT FINAL

In *Lara*, this Court held that, "Proposition 57 is "an ameliorative change to the criminal law that we infer [the Electorate] intended to extend as broadly as possible." (*Lara, supra*, 4 Cal.5th at p. 309, citing and quoting, *People v. Conley* (2016) 63 Cal. 4th 646, 659 and *Estrada, supra*, 63 Cal.2d 740.) Specifically, this Court held that, "the Electorate intended the possible ameliorating benefits of Proposition 57 to apply every minor to whom it may constitutionally apply." (*Id.*, at 310. [Quotation and citation omitted.] Thus, this Court held that Proposition 57 applied to all individuals prosecuted for offenses committed as minors, whose cases were not final. (*Id.* at 303.)

Accordingly, in order to provide these individuals with the "possible ameliorating benefits" of Proposition 57, this Court created a conditional remand procedure, known colloquially as a *Lara* remand, to provide a Proposition 57 juvenile transfer hearing to individuals prosecuted in adult court as minors, whose cases are not final, who have not

previously received a Proposition 57 transfer hearing. (*Lara, supra*, 4 Cal.5th at p. 310, quoting, *People v. Vela* (2017) 11 Cal.App.5th 68, 82.) Many former minors eligible for Proposition 57 transfer hearings under *Lara* were prosecuted directly in adult court and never had a hearing before a juvenile court judge to determine whether their case should be transferred to adult court. Others, like appellant, had "fitness" hearings in juvenile court, under terms far less favorable than those provided by Proposition 57. Under Proposition 57, the prosecution bears the burden of proving that the minor's case should be transferred to adult court, while at the time of appellant's original "fitness" hearing, the minor not only bore the burden of proof that he or she should remain in juvenile court, but had to overcome a presumption that his or her case should be transferred to adult court, and had to prevail on all five of the statutory criteria now found in section 707(a)(3). After Proposition 57, the prosecution bears the burden of proof on the issue of whether a child should be transferred for prosecution in adult court, the presumption has been removed, and the juvenile court reaches its decision based on a totality of the circumstances evaluation of the transfer criteria. (*J.N. v. Superior Court* (2018) 23 Cal. App.5th 706, 710-711, 714; *See also*

Inst. Code, § 707(a)(3); Cal. Rules of Court, rule 5.770(a) and (b)(2); Former Welf & Inst. Code, section 707, subds. (a) and (c), repealed by Prop 57, § 4.2, approved Nov. 8, 2016, Ballot Pamp., Gen. Elec. (Nov. 8, 2016) text of Prop. 57, p. 177; Jud. Council of Cal. Advisory Committee Note to Cal. Rules of Court, rule 5.770(b)).

A *Lara* remand requires the juvenile court to conduct a juvenile transfer hearing pursuant to the amendments to Welfare & Institutions Code section 707 enacted by Proposition 57.[1] "When conducting the transfer 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 the then moved to transfer [the minor's] cause to a court of criminal jurisdiction. [§ 707 subd. (a)(1).] If, after conducting the juvenile transfer hearing, the court determines that it would have transferred [the minor] to a court of criminal jurisdiction because he [or she] is not a fit and proper subject to be dealt with under the juvenile court law, then [the minor's] convictions and sentence are to be reinstated. (§ 701, subd. (a)(1).) On the other hand, if the

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[1] All statutory references are to the Welfare & Institutions Code, unless otherwise specified.

juvenile court finds that it would *not* have transferred [the minor] to a court of criminal jurisdiction, then it shall treat [the minor's] convictions as juvenile adjudications and impose an appropriate disposition within its discretion." (*Lara, supra*, 4 Cal.5th at p. 310. [Citations and quotations omitted.]) (Emphasis supplied.)

Since this Court's ruling in *Lara*, in practice, a small, but steady stream of former minors have returned to juvenile court for such hearings. It is difficult to estimate the precise number, but it is small, because transfer of a minor for prosecution in adult court is "the worst punishment the juvenile system is empowered to inflict," and only a small number of minors are transferred to adult court. (*Ramona R. v. Superior Court* (1985) 37 Cal.3d 802, 810.)[2]

[2] Only 77 juveniles were transferred to adult court statewide in 2018, the year *Lara* was decided. *Juvenile Justice in California* (2018), at p. 86, Table 27; https://data-openjustice.doj.ca.gov/sites/default/files/2019-07/Juvenile%20Justice%20In%20CA%202018%2020190701.pdf.

III. THERE IS NOTHING AWKWARD OR CHALLENGING ABOUT *LARA* REMAND HEARINGS AND RESPONDENT POINTS TO NO SPECIFIC PROBLEM THAT REQUIRES UPENDING THE CURRENT SYSTEM

In *Lara*, as they do here, the prosecution argued that the remedy of a conditional remand to conduct a transfer hearing was too complex for the courts and the parties to undertake. (*Lara, supra,* 4 Cal.5th at pp. 312-313.) This Court rejected that argument, holding, "[t]he potential complexity in providing juveniles charged directly in adult court with a transfer hearing is no reason to deny the hearing." (*Id.*)

Indeed, PJDC and IJDP attorneys have handled a significant number of the *Lara* remands, since *Lara* and have found that a *Lara* remand transfer hearing is not materially different than a transfer hearing held in the first instance. Indeed, approving the procedures from *People v. Vela, supra,* 11 Cal.App.5th 68, this Court held that, upon remand, 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 [the minor's] cause to a court of criminal jurisdiction." (*Lara, supra,* 4 Cal.5th at p. 310, quoting, *Vela, supra*, 11 Cal.App.5th at p. 82.) Thus, a *Lara* remand transfer hearing involves the same procedures and essentially the same evidence as any other transfer hearing conducted under current law.

The only significant difference between a *Lara* remand transfer hearing, and any other transfer hearing conducted under current law, is that the former minor's behavior while incarcerated in state prison, with adults, is often an issue at *Lara* remand hearings, while other transfer hearings usually just examine pretrial behavior of minors held in juvenile hall. To the extent the former minor on a *Lara* remand, has a positive prison record, that may weigh in the minor's favor, particularly with regard to the second criterion for transfer, "[w]hether the minor can be rehabilitated prior to the expiration of juvenile jurisdiction." (§ 707(a)(3)(B). *See also Kevin P. v. Superior Court* (2020) 57 Cal.App.5th 173, 200, fn. 13 (Observing that post-offense, predisposition rehabilitation is relevant to the question of "whether the minor can be

rehabilitated prior to the expiration of the juvenile court's jurisdiction," under section 707(a)(3)(B)(i)).

Alternatively, it may be necessary for the minor to present evidence of the extreme hardship faced by very young, not yet fully physically and mentally developed, people sentenced to adult prison with mature adults that unfortunately may lead to violent encounters and a poor prison record. Expert testimony regarding the extreme challenges faced by very young people incarcerated with mature men and women, in high security level institutions, is available and has been used to address such issues. Indeed, in 2015, long after appellant was sentenced, the Legislature, recognizing these issues, ended the dangerous practice of sending very young men, like Respondent, to Level IV institutions, which, according to the California Department of Corrections are designed to "provide safe and secure housing for the most violent and dangerous male offenders." (https://www.cdcr.ca.gov/adult-operations/high-security/.) In 2015, the Legislature enacted AB 1276, which added section 2905 to the Penal Code, requiring the Department of Corrections and Rehabilitation to separately evaluate and classify youthful offenders under the age of 22

and provide them with rehabilitative services appropriate for their age.

Appellant does not identify any particular challenges faced by the prosecution at *Lara* remand hearings in carrying their burden, by a preponderance of the evidence, to establish that the minor or former minor is not amendable to rehabilitation and should be transferred for prosecution in adult court. "Under section 707 a finding that a minor is not a fit and proper subject to be retained in juvenile court facilities must be support by substantial evidence that the minor would not be amendable to the care, treatment and training program available in such facilities. Whether the youth committed the act alleged in the petition is not the issue in such a determination; the sole question is whether he [or she] would be amenable treatment in the event that he [or she] is ultimately adjudged a ward of the court." (*People v. Chi Ko Wong* (1976) 18 Cal.3d 698, 716.) Furthermore, hearsay is admissible at transfer hearings. (*Id.* at 718.) Accordingly, the prosecution does not face problems of proof in proving that the minor' case should be transferred for prosecution in adult court based on the age of the case, Appellant identifies none and none have appeared

in the litigation of *Lara* remand transfer hearings. Indeed, respondent cites no case indicating widespread problems with such hearings.

The experience of the intervening three years since this Court's decision in *Lara* have not revealed any undue "awkwardness" or challenges. In some cases involving *Lara* remands, where the former minor has shown positive prison conduct, juvenile courts have denied transfer motions, converted the former adult convictions to juvenile adjudications, as instructed in *Lara*, and imposed a juvenile disposition. In other cases, the prosecution has exercised its discretion not to file a motion to transfer the former minor's case to adult court, the juvenile court has converted the former adult criminal convictions to juvenile adjudications and imposed a juvenile court disposition. In still other cases, juvenile courts have converted the minors' adult convictions to juvenile adjudications and imposed a juvenile disposition, because the minors were 14 or 15 years old, at the time of the offense, and the Legislature has since made the considered judgment that such young minors should only be eligible for transfer to adult court in the rare case where the minor is not apprehended until after juvenile jurisdiction

has expired. (§ 707(a)(2)). In still other cases, juvenile courts have granted the motion for transfer and reimposed the adult convictions and sentences. None of these could be considered "awkward results." Rather, they are just results that were the product of the considered discretion of judges, prosecutors and the Legislature, based on evidence, considered at routine hearings.

As the Court of Appeal observed on remand in *Vela*, "[a] limited remand is appropriate under [Penal Code] section 1260 to allow the trial court to resolve one or more factual issues affecting the validity of the judgment but distinct from the issues submitted to the jury…" (*People v. Braxton* (2004) 34 Cal.4th 798, 818-819 [22 Cal.Rptr.3d 46, 101 P.3d 994]). Indeed, a remand with instructions for the lower court to hold a limited hearing is not a particularly unusual disposition. (See e.g., *People v. Lightsey* (2012) 54 Cal.4th 668, 674 [143 Cal.Rptr. 3d 589, 279 P.3d 1072] [remand for hearing concerning defendant's competency]; *People v. Johnson* (2006) 38 Cal.4th 1096, 1098 [45 Cal.Rptr.3d 1, 136 P.3d 804] [remand for hearing regarding prosecutor's use of peremptory challenges]; *People v. Wycoff* (2008) 164 Cal.App.4th 410, 412 [78 Cal.Rptr. 3d 907]

[conditional reversal remand for review of police personnel records.]" (*People v. Vela*, 21 Cal.App.5th 1099, 1113.)

Such a remand may occur, and be appropriate, even when the defendant has been incarcerated for a lengthy period of time. (*See People v. Franklin* (2016) 63 Cal.4th 261 (Providing for a limited remand to permit an individual serving a lengthy sentence to make a record of youthful mitigating factors to present at a subsequent youthful offender parole hearing years in the future.))

It is not known how many minors the People chose to prosecute directly in adult court, during the brief period when such prosecutions were permitted between 1999 and 2016, how many minors were transferred for prosecution in adult court under procedures far less favorable than those enacted by Proposition 57, or how many minors were just 14 or 15 when direct filed or transferred. However, this Court held in *Lara*, that any of them, whose case was not final, was entitled the benefits of Proposition 57. (*Lara*, 4 Cal.5th at 311.) No "awkward results" or undue challenges have resulted from that ruling. Moreover, the dearth of published opinions regarding post-*Lara* litigation of these cases, strongly suggests that application of this Court's decision in

Lara has not posed particular challenges for the lower courts. Indeed, Appellant does not identify any such specific challenges that have resulted from *Lara* or that would result from the application of *Lara* to Respondent's nonfinal case.

Appellant's assertion that the question of whether a former minor "can be rehabilitated prior to the expiration of juvenile jurisdiction," within the meaning of 707(a)(3)(B)(i), "is rendered moot by application of Proposition 57 to a defendant, such as appellant, who is now well past the age of juvenile court jurisdiction," is incorrect. (POBM, at 29.) First, as the *Kevin P.* Court held, and as described, *supra.*, post-offense, predisposition rehabilitation is relevant to the issue of "whether the minor can be rehabilitated prior to the expiration of juvenile jurisdiction," under section 707(a)(3)(B)(i). (*Kevin P. v. Superior Court* (2020) 57 Cal.App.5th 173, 200, fn 13.) It requires an extraordinarily cynical and jaundiced view of the CDCR to assert that it is, in fact, incapable of rehabilitating a young person, who, like Respondent, has spent more than twenty years in its care.

Second, the juvenile court does have jurisdiction to commit a former minor of any age, including appellant, against whom a motion to transfer the former minor to adult

court has been filed, to either the Department of Corrections, Division of Juvenile Justice ("DJJ") or a local secure youth treatment facility ("SYTF") for a two year period of control. (§ 607(g)(2) ("A person who, at the time of the adjudication of a crime or crimes, would, in criminal court, have faced an aggregate sentence of seven years or more, shall be discharged upon the expiration of a two-year period of control, or when the person attains 25 years of age, *whichever occurs later*, unless an order for further detention has been made by the committing court pursuant to Article 6 (commencing with Section 1800) of Chapter 1 of division 2.5.") (Emphasis supplied.)

Although DJJ is scheduled to close, in favor of realignment and commitment to local SYTF's, it will remain open for commitments of youth, such as appellant, who have had transfer motions filed against them, until final closure in July, 2023. (§§ 731(a) and 736.5(c)). The juvenile court would also have the option of committing Respondent for a two-year period of control to a local SYTF. (§ 875(c)(1) ("[I]f the ward has been committed to a facility based on adjudication for an offense or offenses for which the ward, if convicted in adult criminal court, would face an aggregate

sentence of seven or more years, the maximum period of confinement shall not exceed the ward attaining 25 years of age or two years from the date of commitment, *whichever occurs later*.") (Emphasis supplied.) Accordingly, it is inaccurate to say that the issue of whether [appellant] can be rehabilitated prior to the expiration of juvenile jurisdiction," pursuant to section 707(a)(3)(B)(i) is "moot," as respondent states at page 29 of respondent's POBM.

Respondent also adopts a very narrow definition of the "possible ameliorative benefits" of Proposition 57. As respondent acknowledges, one of the "possible ameliorative benefits" of Proposition 57 would be that if the juvenile court, on remand, determined that the People had not met their burden under section 707(a)(3), appellant would be entitled to "limited custody time," as described above. (OPBM, at 15.) That is, after serving over twenty years, appellant could face the prospect of release after, at most, two additional years.

However, there are many other profound "possible ameliorative benefits" of the application of Proposition 57 to appellant's resentencing. "While a person convicted of serious crimes in adult court can be punished by a long

prison sentence, juveniles are generally treated quite differently, with rehabilitation as the goal." (*Lara*, 4 Cal.5th at 398.) The passage of Proposition 57 marked a return to those aspirational rehabilitative goals reflected in the initial juvenile justice philosophy. Now, those goals extend to adults who committed crimes when they were children as explained by this Court in *Lara,* "…[t]he potential 'ameliorating benefits' of rehabilitation (rather than punishment) which now extend to every eligible minor must now also apply to every case to which it constitutionally could apply." (*Lara*, 4 Cal. 5th at p. 309.) Subsumed within the concept of rehabilitation is the idea that people who have committed crimes as adolescents should be protected from those mistakes to the extent possible so that those people can become fully functioning members of society.

Thus, the issue is more than rehabilitation versus punishment. The additional issue is whether, an adult, due to his or her age, loses the ability to be protected from the mistakes he or she made when a minor. Although such an adult, who has spent many years undergoing rehabilitation in the California Department of Corrections and Rehabilitation, may no longer need the rehabilitative

programming available through the juvenile system, that adult still needs to be protected from the mistakes he or she made as an adolescent and to be given the opportunity to continue living a life as a fully functioning member of society. Thus, that adult still needs the protections of the juvenile court. (*See* *People v. Buycks* (2018) 5 Cal.5th 857,) In *Buycks*, this Court held that defendants who suffered from collateral consequences from the application of felony convictions, reduced to misdemeanors by subsequent ameliorative legislation, were entitled to relief from those collateral consequences. (*Buycks*, 5 Cal. 5th at 883.) Here, as outlined above, an adult conviction, as opposed to a juvenile adjudication, carries substantial collateral consequences that last the entirety of the individual's life. Accordingly, the juvenile law reforms enacted by Proposition 57 are as relevant to appellant's resentencing, as they would have been to his original prosecution and sentencing.

Moreover, as set out below, it is clear that, even if *Estrada's* "inevitable inference" that ameliorative statutes apply to all cases to which they constitutionally could apply did not apply here, both the Electorate and the Legislature, do not wish to turn their backs on the many minors who

were sent to adult prison to serve long sentences, prior to these reforms, when those former minors are now subject to resentencing. Rather, the Electorate and the Legislature expect current law to apply to such resentencings.

IV. THE HISTORY OF TRANSFER OF MINORS FOR PROSECUTION IN ADULT COURT IN CALIFORNIA DOES NOT SUPPORT RESPONDENT'S ASSUMPTION THAT THE ELECTORATE AND THE LEGISLATURE WOULD PREFER THAT APPELLANT BE DEPRIVED OF A TRANSFER HEARING AND RESENTECED UNDER OUTDATED LAW

As set out below, the history of the transfer of minors for prosecution in adult court in California, and the reforms of the past six years, do not support the inference proposed by respondent that the Legislature and the Electorate would prefer that appellant not receive the benefit of current law regarding prosecution and sentencing of youth at his resentencing. Respondent advances this argument despite the fact that history shows that appellant was tried during and brief, and anomalous, time period when California turned its back on the idea that juveniles should be treated differently than adults because juveniles are less culpable for their actions and more amenable to rehabilitation.

There is no support for respondent's assumption that the Legislature and the Electorate would prefer that appellant be sentenced under older, outdated laws, that failed to recognize the scientific basis for different treatment of juveniles. Rather, it is abundantly clear that both the Legislature and the Electorate see the transfer of minors for prosecution in adult court and incarceration for lengthy terms in adult prisons as appropriate for a shrinking number of youth, and *do* wish to apply such reforms to former minors subject to resentencing because they have received post-conviction relief, especially, when, as here, their sentences are vacated for failure to comply with constitutionally required consideration of their youth at sentencing.

In *Lara*, this Court set out the history of transfer of prosecution of minors' cases from juvenile court to adult court, observing that, "[h]istorically, a child could be tried in juvenile court only after a judicial determination, before jeopardy attached that he or she was unfit to be dealt with under juvenile court law." (*Lara*, 4 Cal.5th at 305.) Beginning in 1999, "amendments to former sections 602 and 707, some by initiative changed this historical rule,"

permitting and sometimes requiring, prosecutors "to file charges against the juvenile directly in criminal court, where the juvenile would be treated as adult." (*Id.*) This had the effect of significantly increasing the number of minors prosecuted in adult court and sent to adult prisons.

Indeed, for most of juvenile court history, except for a brief period between 1999 and 2016, the transfer of a minor for prosecution in adult court, and sentencing to an adult prison, was for only a very small group of minors over sixteen years of age, and could only occur after a judge made the decision.

When the Arnold-Kennick Juvenile Justice Law was enacted in 1961, it included section 707, allowing the court to transfer a young person to adult court for felony offenses if they "would not be amenable to the care, treatment and training program available through the facilities of the juvenile court," and the youth was 16 years or older at the time of the alleged commission of the offense." (Stats. 1961, ch. 1616, Art. 8, p. 3485.)[3]

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[3] While statutory and case law going back to at least 1909 characterized children as being "fit" or "unfit" to remain in juvenile court, Proposition 57 has eliminated these

The Law followed the 1960 recommendations of a Governor's Special Study Commission, which had strongly supported a continuation of the protective and rehabilitative philosophy of the juvenile court. (*Report of the Governor's Special Study Commission on Juvenile Justice, Part I: Recommendations for Changes in California's Juvenile Court Law* (1960), p. 12.)[4]

With respect to transfer of juvenile cases to adult court, the Commission specified that it should be limited to the relatively small number of youth who could not be rehabilitated: "Transfers to criminal court should be decided solely on the question as to whether the minor can benefit

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archaic terms and refers, instead, to whether a young person's case should be transferred to adult court for prosecution. The terms "fit," "unfit," and "fitness" are used in this brief only when called for by reference to specific statutory language or cases.

[4] The very first juvenile court law in California only applied to youth under the age of 16 and did not address transfer. (Stats. 1903, ch. 43, § 8, p. 47.) Beginning in 1909 California law allowed transfer to adult court, but did not set a lower age; the statute was notable, however, in allowing youth up to age 21 at the time of their offense to be handled in the juvenile court if the court made a determination that they were "fit" for juvenile court treatment. (Stats. 1909, ch. 133, §§ 16-18, pp. 219-222.)

from the juvenile court's rehabilitative services." (*Id*. at p. 17.)

For the next decade-and-a-half, section 707 remained relatively unchanged. But after the law was changed to require consideration of five specific criteria in the transfer decision (Stats. 1975, ch. 1266, § 4, p. 3325), section 707 began to undergo amendments that made it easier to send youth to adult court, resulting in rising numbers of minors, like appellant, prosecuted in adult court and sent to adult prison. The changes coincided with now discredited beliefs about juvenile crime and the perceived incapacity of minors for rehabilitation.

The perceived need for stronger measures to stem violent juvenile crime resulted in successive changes to section 707 making it easier to try youth as adults and expanding the number of minors sent to the adult court for prosecution. Beginning in 1976, the Legislature divided transfer cases into two categories – section 707, subdivision (a) applied to less serious cases [age 16 and alleged violation of any criminal statute or ordinance], and section 707, subdivision (b) applied to more serious cases [age 16 and alleged to have committed one of 11 listed offenses]. (Stats.

1976, ch. 1071, § 28.5, pp. 4825-4827, amending § 707.)

From the late 1970's to the late 1990's transfer was made even easier, and the number of minors sent for prosecution in adult court rose, by expanding the list of 707(b) offenses, the ages for eligibility, and making the findings more stringent for retention in juvenile court.[5] By the beginning of 1999, there were 29 offenses on the list of 707(b) offenses that rendered a young person presumptively "unfit" for juvenile court. (Stats. 1998, ch. 936 (AB 105), §§ 21 & 21.5, pp. 6908-6909.) That is, the minor had to prove that he or she should remain in juvenile court, resulting in even more minors being sent to adult court for prosecution.

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[5] Stats, 1977, ch. 1150, § 2, p. 3694; Stats. 1979, ch. 944, § 19, p. 3264; Stats. 1979, ch. 1177, § 19; Stats. 1979, ch. 1177, § 2, pp. 4509-4601; Stats. 1982, ch. 283, § 2, p. 924; Stats. 1982, ch. 1094, § 2, p. 3982; Stats. 1982, ch. 1282, § 4.5, p. 4750; Stats. 1983, ch. 390, § 2, p. 1632; Stats. 1986, ch. 676, § 2, p. 2296; Stats. 1989, ch. 820, § 1, p. 2700; Stats. 1990, ch. 249 (A.B. 2601), § 1, p. 1515; Stats. 1991, ch. 303 (A.B. 1780), § 1, p. 1872; Stats. 1993, ch. 610 (A.B. 6), § 30, p. 3422; Stats. 1993, ch. 611 (S.B. 60), § 34, p. 3587; Stats. 1994, ch. 448 (A.B. 1948), § 3, p. 2427; Stats. 1994, ch. 453 (A.B. 560), § 9.5, p. 2528; Stats. 1997, ch. 910 (S.B. 1195), § 2, p. 6532; Stats. 1998, ch. 925, (A.B. 1290), § 7, p. 6194; Stats. 1998, ch. 936 (A.B. 105), §§ 21 & 21.5, pp. 6909, 6914.

The number of minors sent for prosecution in adult court expanded still more when, in 1994, when the Legislature passed A.B. 560 amending section 707 to drop the age for transfer to 14 for some offenses. (Stats. 1994, ch. 453 (AB 560), § 9.5, pp. 2525- 2526.)

Then, in 1999 the Legislature enacted section 602, subdivision (b), *requiring* adult court prosecution of youth 16 and older who committed specified homicide and sex offenses, if they had previously been made a ward of the court for a felony at age fourteen or older. (Stats. 1999, ch. 996 (SB 334), § 12.2, pp. 7560-7561.)

In 2000, the voters went further, enacting Proposition 21, the "Gang Violence and Juvenile Crime Prevention Act of 1998." (Initiative Measure (Prop 21), § 26, approved March 7, 2000, effective March 8, 2000.) The measure made dozens of changes to juvenile and criminal laws, primarily directed at increasing penalties, creating new crimes, reducing traditional protections juveniles enjoyed, broadening the kinds of cases that could result in transfer, and most notably, allowing prosecutors to file cases against juveniles directly in criminal court without a judicial hearing. (*Ibid.*) The Legislative Analyst confirmed for voters in the Ballot

Pamphlet, that Proposition 21 "[r]equires more juvenile offenders to be tried in adult court." (Voter Information Guide, Primary Elec. (Mar. 7, 2000), Proposition 21, p. 45.)

However, by the time Proposition 21 was enacted in 2000, public perceptions were starting to shift. In the late 1990's, the John D. and Catherine T. MacArthur Foundation started the Research Network on Adolescent Development & Juvenile Justice. The Network was concerned about the justice system's disregard for the basic principle underlying the existence of a separate juvenile justice system: that children are less mature than adults, and that the juvenile legal system that deals with them should reflect that reality. It set out to explore that premise, drawing from and expanding upon the latest research on child and adolescent development. Its members included people with expertise in social science, neuroscience, and legal policy and practice. The Network launched a series of research studies resulting in eight books and 212 articles in peer reviewed journals and books, which have had a notable influence on how juveniles are seen and treated in the American justice system. (See <https://www.macfound.org/networks/research-network-on-adolescent-development-juvenile/> [as of June 10, 2020.])

Also, the National Academies of Sciences convened dozens of top scientists and juvenile justice experts to explore and present current findings in adolescent development and brain science as they relate to youth justice. In 2013, they published *Juvenile Justice Reform: An Adolescent Development Approach* (Bonnie, et al. Eds., National Research Council (2013)). Their research made it clear that the treatment youth need to develop in a healthy way is difficult to secure in long-term institutional confinement. (*Id*. at pp. 3-6, 134.). Additional research established that even youth who commit serious crimes are unlikely to continue their criminal behavior into adulthood. (Mulvey, *Highlights from Pathways to Desistance: A Longitudinal Study of Serious Adolescent Offenders*, OJJDP Fact Sheet (March 2011) p. 3.)

A 2014 Pew Charitable Trusts poll found that voters overwhelmingly support rehabilitation for juveniles, and care less about whether or how long juvenile offenders are incarcerated than about preventing crime. (Pew Charitable Trusts, *Public Opinion on Juvenile Justice in America: Issue Brief* (Nov. 2014) pp. 2-3.) A Youth First Initiative poll of 1,000 Americans in early 2016 found that 78% of those

polled supported proposals to reform the youth justice system because youth who commit delinquent acts have the ability to change for the better, and 79% felt that the best thing for society is to rehabilitate these youth so they can become productive members of society instead of incarcerating them. (*Poll Results on Youth Justice Reform*, GBA Strategies (Feb. 1, 2016.))

News of adolescent development research findings also appeared in popular print and non-print media. The public began to see the kinds of books and articles about the "teenage brain" that are now familiar. (See, e.g., Sifferlin, *Why Teenage Brains Are So Hard to Understand*, Time (Sept. 8, 2017); Layton, *Why are Teens Oblivious to the Pile of Dirty Clothes on the Bedroom Floor?* Washington Post (Apr. 22, 2015); Steinberg, *Age of Opportunity: Lessons from the New Science of Adolescence*, Houghton Mifflin (2014)). The connection between adolescent development and the need for age-appropriate interventions became common knowledge.

There was also widely disseminated research showing that trying youth as adults is actually harmful to public safety. A study by the Centers for Disease Control found that

"transfer to the adult criminal justice system typically increases rather than decreases rates of violence among transferred youth" after they have been released. (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 on Community Preventive Services*, Department of Health and Human Services, Centers for Disease Control and Prevention (Nov. 2007), p. 9.) A Department of Justice analysis of then existing studies determined that rates of recidivism were higher among juveniles who were tried in adult courts than among those kept in the juvenile system, and that transfer "does not engender community protection," but instead "substantially increases recidivism." (Redding, Juvenile Transfer Laws: An Effective Deterrent to Delinquency? supra, p. 6.)

Beginning in 2005, the adolescent development research found its way into a groundbreaking series of Supreme Court opinions which formed the backdrop against which the voters considered Proposition 57. In *Roper v. Simmons* (2005) 543 U.S. 551, the United States Supreme Court struck down capital punishment for juveniles, finding

that a lack of maturity and underdeveloped sense of responsibility are more understandable in the young, and that these qualities often result in impetuous and ill-considered actions and decisions. (*Id.* at p. 569.) Because of this, the principles of deterrence and retribution that undergird adult criminal justice cannot be fairly be applied to young people. (*Id.* at p. 571.)

In *Graham v. Florida* (2010) 560 U.S. 48, 68, the Supreme Court prohibited life without parole sentences in juvenile non-homicide cases, reiterating that compared with adults, juveniles have a lack of maturity and an underdeveloped sense of responsibility; they are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure; and their characters are not as well formed. The court noted that it is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption. (*Graham, supra,* 560 U.S.at p. 68, citing *Roper, supra,* 543 U.S. at p. 573.) The court concluded that a juvenile is not absolved of responsibility for his actions, but his transgression is not as morally

reprehensible as that of an adult. (*Graham, supra*, 560 U.S. at p. 68.)

These adolescent development principles were crystallized in *Miller v. Alabama* (2012) 567 U.S. 460, in which the court disapproved mandatory life without parole statutes for juveniles. In *Miller*, the court looked to research showing that only a relatively small proportion of adolescents who engage in illegal activity develop entrenched patterns of problem behavior. (*Miller, supra*, 576 U.S. at p. 471.) The court reasoned that the fundamental differences between juvenile and adult minds mean that the child's moral culpability is lessened, and that as neurological development occurs, the deficiencies will be reformed. (*Miller, supra*, 576 U.S. at. pp. 471-472.) The United Supreme Court summarized the hallmark features of youth as:

- Immaturity, impetuosity, and failure to appreciate risks and consequences;
- Family and home environment that surrounds the youth—and from which he cannot usually extricate himself (or herself);
- Circumstances of the homicide offense, including the extent of participation in the

conduct, and the way familial and peer pressures may have affected the youth;

- Incompetencies associated with youth—for example, inability to deal with police officers, prosecutors (including on a plea agreement), or incapacity to assist one's own attorneys;

- Capacity for rehabilitation.

(*Miller, supra*, 567 U.S. at 477-478.).

The Supreme Court in *Miller* held that the court must consider those youth specific factors before imposing a sentence of life without parole. Subsequently, in *Montgomery v. Louisiana* (2016) 136 S. Ct. 718, the United States Supreme Court held that *Miller* announced a substantive rule of constitutional a law and was therefore retroactive, and that the defendant had the right to attempt to establish that his offense was the product of "transient immaturity," and not "irreparable corruption." (*Id.*)

The Court of Appeal applied *Miller* and *Montgomery* in vacating appellant's sentence and remanding his case for resentencing in *People v. Padilla* (2016) 4 Cal.App.5th 656.

Then, in 2016, "Proposition 57 changed the procedure again and largely returned California to the historical rule,"

amending the Welfare & Institutions Code so as to eliminate direct filing of charges against minors in adult court, and requiring a judge to decide whether to grant a prosecution motion to transfer a minor's case from juvenile to adult court based upon statutory criteria. (*Lara, supra*, 4 Cal.5th at p. 305.)

In *O.G. v. Superior Court* (2021) 11 Cal.5th 82, 650-651, this Court observed that, "[i]n the years after the passage of Proposition 21 there was a sea change in penology regarding the relative culpability and rehabilitation possibilities for juvenile offenders, as reflected in several judicial opinions. (*People v. Vela* (2018) 21 Cal.App.5th 1099, 1106 [230 Cal.Rptr. 3d 880.] These changes were based on scientific research on adolescent brain development confirming that children are different than adults in ways that are critical to identifying age-appropriate sentences. [*See e.g.* *Roper v. Simmons* (2005) 543 U.S. 551, 569-571 [161 L.Ed.2d 1, 125 S.Ct. 1183]; *Graham v. Florida* (2010) 560 U.S. 48, 68-75 [176 L.Ed.2d 825, 130 S.Ct. 2011 (*Graham*); *Miller v. Alabama* (2012) 567 U.S. 460, 469-470 [183 L.Ed.2d 407, 132 S.Ct. 2455]; *People v. Guitierrez* (2014) 58 Cal.4th 1354, 1375-1376 [171 Cal.Rptr.3d 421, 324 P.3d 245]; *People v.*

Caballero (2012) 55 Cal.4th 262, 267 [145 Cal.Rptr. 286, 282 P.3d 291.]) In the same period, the California Legislature enacted numerous reforms reflecting a rethinking of punishment for minors. (*See e.g.* Stat. 2012, ch. 828, § 1; Stats. 2013, ch. 312, § 4; Stats. 2015, ch. 471, §1; Stats. 2015, ch. 234, § 1.)" (*O.G., supra,* 11 Cal. 5th at p. 88.)

As noted by this Court in *O.G.*, as the voters prepared to vote on Proposition 57 in 2016, they were aware of recent legislative enactments that incorporated modern concepts of adolescent development into law. California first explored these issues by enacting sentencing review for youth receiving life without the possibility of parole sentences (Stats. 2012 (S.B. 9), ch. 828, § 27, adding Pen. Code, § 1170.2, subd. (d)(2)), and then by incorporating adolescent development factors into laws for parole of juveniles tried in the adult system. (Stats. 2013 (S.B. 260), ch. 312, adding Pen. Code, §§ 3051 & 4801, subd. (c) [establishing youth offender parole]; and Stats. 2014 (S.B. 261), ch. 471, amending Pen. Code, §§ 3051, 4801 [to afford youth offender parole to youth up to age 23 at the time of their offense].) (*O.G., supra,* 11 Cal.5th at p. 88.)

In 2015, a year before the voters went to the polls for

Proposition 57, there was further evidence of a legislative shift away from "get tough" rules for transfer and to shrink the number of minors transferred for prosecution in adult court and sent to adult prisons. That year, the Legislature passed S.B. 382 (Stats. 2015 (SB 382), ch. 234), which clarified the section 707 criteria for transfer to adult court by focusing on adolescent development factors, the characteristics of the young person, and facts that would mitigate the gravity of the offense.[6] Much of what is included in the S.B. 382 language parallels the language in the decisions of the United States Supreme Court and this Court. Senator Lara, the author of the bill, stated that the

[6] As amended by S.B. 382, section 707, subdivision (c) provided that the court may consider age, maturity, intellectual capacity, physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences, the effect of familial, adult, or peer pressure on the minor's actions, the effect of the minor's family and community environment and childhood trauma, the minor's potential to grow and mature, the adequacy of the services previously provided to address the minor's needs, the minor's actual behavior, mental state, degree of involvement in the crime, level of harm actually caused, and the minor's mental and emotional development. (§ 707, subd. (c), as amended by S.B. 382, Stats. 2015, ch. 234, § 2.)

bill was needed because:

> The decision to send a juvenile to the adult system is a very serious one. The juvenile court system is focused on rehabilitation and provides far more supports and opportunities for juvenile offenders compared to adult criminal facilities. Recent U.S. and California Supreme court cases, as well as cognitive science has found that juveniles are more able to reform and become productive members of society, if allowed to access the appropriate rehabilitation.

(Sen. Com. on Pub. Safety, Analysis of S.B. 382 (2015-2016 Reg. Sess.) as amended Apr. 20, 2015, Juvenile: Fitness Criteria, p. 5.)

In enacting S.B. 382, the Legislature manifestly intended to narrow the group of youth subjected to the punitive adult system. Then, in late 2015, Governor Jerry Brown began working with youth advocates to bring an initiative to the people of California. For his part, the Governor had experienced second thoughts about his role in the 1977 determinate sentencing laws, which had marked the beginning of the tough on crime era, but had fueled a booming prison population. (Myers, *Gov. Brown to seek November ballot initiative to relax mandatory prison sentences*, L.A. Times (Jan. 26, 2016)). The state had been

successfully sued over prison overcrowding and was under a 2009 federal court mandate to reduce population. The initiative would help with that issue, but Governor Brown also voiced concern that the prison system allowed too few chances for rehabilitation. (*Ibid*.) He urged that, by allowing parole consideration for good conduct, prisoners would have an incentive to demonstrate that they were ready to go back into society. (*Ibid*.) The adult provisions of the initiative would allow corrections officials to more easily award credits toward early release based on an inmate's good behavior, efforts to rehabilitate or participation in prison education programs, and would allow the state parole board to grant early release for nonviolent inmates who complete a full sentence for their primary offense. (*Ibid*.)

The juvenile provisions of Proposition 57 were just as dramatic. Media accounts at the time clearly tied the law changes— including requiring a judge's approval before juveniles could be tried in an adult court — to an intention to reverse Proposition 21. (Myers, *Why Gov. Jerry Brown is staking so much on overhauling prison parole*, L.A. Times (Oct. 27, 2016),<https://www.latimes.com/politics/la-pol-ca-prop-57-jerry-brown- prison-parole-20161027-story.html> [as

of June 4, 2020]). Some specifically stated that "prosecutors have wrongly moved too many juveniles into the adult legal system, missing chances for rehabilitation." (*Ibid*.)

Even if voters were unaware of the public policy discussion, the text of Proposition 57 clearly indicated its intent to increase the number of youth who would remain in the juvenile system to be rehabilitated. The Voter Guide graphically presented exactly what would be deleted or added, and what remained the same. (Voter Information Guide, Gen. Elec. (Nov. 8, 2016), text of Prop. 57, § 4, pp. 141-146.)

The measure:

- Abolished prosecutorial direct filing of cases involving juveniles in adult court;
- Eliminated the presumption of "unfitness" and instead, placed the burden on prosecutors to show that the young person should be transferred;
- Eliminated language that had allowed youth to be found "unfit" on a single criterion, substituting a requirement that the court decide whether the young person should be transferred based on consideration of all the criteria, "inclusive"; and
- Repealed Welfare and Institutions Code sections 602,

> subdivision (b), and 707, subdivision (d), which had required filing certain cases directly in adult court.

In *O.G.*, this Court concluded that:

> The major and fundamental purpose of Proposition 57's juvenile justice provisions —as evidence by its express language and enumerated purposes, the ballot materials, and its historical backdrop and the changes it made to existing law—was an ameliorative change to the criminal law that emphasized rehabilitation over punishment. The impact of this ameliorative change was *decarceration*…

(*O.G., supra*, 11 Cal.5th at p. 100.) (Emphasis supplied.)

Then, in 2018, the Legislature "continued California's return to the historical rule, "and further shrank the number of juveniles going to adult court, "by eliminating the transfer of juveniles accused of committing crimes when they were 14 or 15 years old, unless they first apprehended after the end of juvenile jurisdiction," by passing S.B. 1391. (*O.G., supra*, 11 Cal.5th at pp. 6-7, citing, Welf & Insts. Code, § 707(a)(1)-(2)).

In considering a challenge by the People to the constitutionality of S.B. 1391, this Court concluded that, "[b]oth Proposition 57 and Senate Bill 1391 sought to protect

public safety by reducing juvenile recidivism and, therefore under a reasonable construction of Proposition 57, Senate Bill 1391 is consistent with and furthers the proposition's public safety purpose…Senate Bill 1391 can easily be construed to promote public safety and reduce crime, *since it increases the number of youth offenders who will remain in the juvenile justice system and avoid prison where the chance of recidivism is higher."* (*O.G., supra,* 11 Cal.5th at p. 93. [Citations and quotations omitted.]) (Emphasis supplied.)

In 2020 and 2021, the Legislature made its goal of decarceration explicit by passing S.B. 823 and S.B. 92, which provided for the closure of DJJ and for the realignment of juvenile justice facilities and treatment to local secure youth treatment facilities. (Stats. 2020, ch. 337, (S.B. 823); Stats. 2021, ch. 18 (SB 92)). In the uncodified section 1(e) of S.B. 823, the Legislature expressly stated that:

> It is the intent of the Legislature and the administration for counties to use evidence-based and promising practices and programs that improve the outcome 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.

(Stats. 2020, ch. 337, § 1(e)(SB 823.)) (Emphasis supplied.)

In light of this clear evidence of the intent of the Legislature and the Electorate to decarcerate youth, and to reduce the transfer of youth into adult prosecution and adult prisons, respondent's assertion that it is "probable" and "reasonable" to infer that the Electorate and the Legislature would want old, outdated juvenile laws—designed to send more minors to adult prisons for lengthy prison terms— be applied at appellant's resentencing cannot be sustained. Rather, this is a case where *Estrada's* and *Lara's* "inevitable inference" that the Electorate, in passing Proposition 57, "expressly determined" that its former law, requiring appellant to overcome a presumption that he should be transferred to adult court, and to prove that he should not be transferred for prosecution to adult court, under all five of the statutory criteria, under now section 707(a)(3), was "too severe," and that Respondent should receive the "possible ameliorating benefits" of Proposition 57 at his resentencing. (*Lara, supra,* 4 Cal.5th at p. 309.)

CONCLUSION

For all of the foregoing reasons, and for the reasons discussed in appellant's Answer Brief on the Merits, Amici Curiae respectfully urge the Court to affirm the judgment of the Court of Appeal.

Dated: June 18, 2021

Respectfully Submitted,

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STATE OF CALIFORNIA
Supreme Court of California

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