

New Requirements at Juvenile Transfer Hearings

California Senate Bill 545

The Safeguarding Against Felonies and Exploitation (SAFE) of Children Act

This resource outlines the three key provisions of the California SAFE Children Act¹ of 2023 and provides resources for each provision:

1. Judges must consider youth's trauma history when evaluating the degree of criminal sophistication (Cal. Welf. & Inst. Code § 707(a)(3)(A)(ii))
 - ...what constitutes trauma, including both adverse childhood events and adverse community environments*
 - ...examples of evidence of childhood and youth trauma*
2. Judges must consider youth's trafficking, sexual abuse, and sexual battery history when evaluating the degree of criminal sophistication (Cal. Welf. & Inst. Code § 707(a)(3)(A)(ii))
 - ...illustrations of how youth may experience human trafficking, including labor, commercial sexual exploitation, and forced criminality*
 - ...examples of evidence that a youth has experienced human trafficking*
 - ...special considerations for children experiencing forced criminality or who have an adult co-defendant*
3. Judges must keep the case in juvenile court if there is evidence the alleged victim trafficked, sexually abused, or sexually battered the youth (Cal. Welf. & Inst. Code § 707.2)
 - ...examples of evidence of trafficking by the alleged victim*
 - ...guidance for considering the relationship between the youth and the alleged victim*

These new provisions:

- Seek to ensure that youth with trauma histories receive trauma-informed counseling, community-based treatment, and rehabilitative services rather than punishment in the adult criminal justice system.
- Seek to hold youth accountable for their actions in age-appropriate, trauma-informed ways that promote healing.

Judges Must Consider Youth’s Trauma History When Evaluating the Degree of Criminal Sophistication

(Cal. Welf. & Inst. Code § 707(a)(3)(A)(ii))

At a transfer hearing, judges must give weight to the existence of trauma before a youth turned 18.²

“When evaluating [the degree of criminal sophistication exhibited by the minor], the juvenile court shall give weight to any relevant factor, including... **the existence of childhood trauma**” Cal. Welf. & Inst. Code § 707(a)(3)(A)(ii)

Since the 1990s, researchers have tied childhood trauma to a plethora of negative outcomes, including poor educational attainment, subsequent victimization, and justice system involvement.³ The impact of trauma is cumulative—the more trauma a child or youth experiences, the more negative adult outcomes they have.⁴



Youth can experience trauma that impacts them on an *individual* level, known as **Adverse Childhood Experiences**⁵:

- Physical, Emotional, or Sexual Abuse
- Physical or Emotional Neglect
- Family/Domestic Violence
- Mental Illness or Substance Abuse in Home
- Separation from Parent(s) and Caregiver(s)
- Incarcerated Household or Family Member



Youth can also experience trauma that impacts them on a *collective* level, known as **Adverse Community Environments**⁶:

- Intergenerational Poverty
- Discrimination
- Community Disruption
- Lack of Opportunity, Economic Mobility, & Social Capital
- Poor Housing Quality & Educational Opportunity
- Violence within the Community

Screening for Evidence of Childhood and Youth Trauma

Judges are statutorily required to consider⁷ the existence⁸ of trauma. Childhood and youth traumas can compound to produce cumulative adverse outcomes. Evidence of any of the following indicates trauma before age 18:



- Did a parent or other adult in the youth’s household often or very often...
 - Swear at them, insult them, put them down, or humiliate them?
 - Act in a way that made them afraid that they might be physically hurt?
 - Push, grab, slap, or throw something at them?
 - Ever hit them so hard that they had marks or were injured?

SEXUAL
ABUSE

- Did an adult or person older than the youth ever...
 - Touch the youth in a sexual way or have the youth touch their body in a sexual way?
 - Attempt or actually have oral, anal, or vaginal intercourse with them?
 - Offer basic needs like food, shelter, or clothing in exchange for sexual acts?
 - Force or coerce the youth into sexual acts with other people?
- Did the youth often or very often feel that ...

PHYSICAL/
EMOTIONAL
NEGLECT

- No one in their family loved them or thought they were important or special?
- Their family didn't look out for each other, feel close to each other, or support each other?
- They didn't have enough to eat, had to wear dirty clothes, and had no one to protect them?
- Their parents were too drunk or high to take care of them or take them to the doctor if they needed it?

PARENTAL
SEPARATION/
INCARCERATED
FAMILY
MEMBER

- Was the youth ever separated from one of their parents, caregivers, or siblings because ...
 - Their parents were separated or divorced?
 - They lived in another country?
 - They were incarcerated in the criminal justice system or immigration detention?
 - They were hospitalized or died?
 - The youth was in the foster or child welfare system?

FAMILY/
DOMESTIC
VIOLENCE

- Was the youth or the youth's parent, stepparent, grandparent, sibling, or household member ...
 - Often or very often pushed, grabbed, slapped, or had something thrown at them?
 - Sometimes, often, or very often kicked, bitten, hit with a fist, or hit with something hard?
 - Ever repeatedly hit or threatened with a gun or knife?
 - Emotionally abused, including ridiculed, shamed, isolated, or unable to make important family decisions?

MENTAL
ILLNESS/
SUBSTANCE
ABUSE

- Did the youth live with a family member who ...
 - Used alcohol or drugs in a way that interfered with their ability to care for the youth?
 - Experienced depression or mental illness?
 - Attempted or completed suicide?

POVERTY/
VIOLENCE

- In the youth's community ...
 - Did families live paycheck to paycheck or struggle to make enough to make ends meet?
 - Did they sometimes feel unsafe to be outside or inside their home?
 - Were people regularly threatened, hurt, or killed?
 - Were the police regularly present?

DISCRIMINATION

- Was the youth, their family, or their friends treated poorly or lacked opportunities because of ...
 - Their race, ethnicity, or religion?
 - What gender they are, the way they dress, or the people they dated?
 - What country they or their family is from or their ability to speak English?
 - A disability or anything else that made them appear different from others?

COMMUNITY
DISRUPTION

- Did the youth's community experience disruption due to ...
 - An absence of elders (due to death or incarceration)?
 - Rivaling gang disputes?
 - A natural disaster or mass casualty event?

LACK OF
OPPORTUNITY,
MOBILITY,
CAPITAL

- Did people in the youth's community ...
 - Lack access to work opportunities with fair compensation and benefits?
 - Face barriers to accessing affordable groceries and transportation?
 - Move away from the community in search of better educational or job opportunities?

POOR
HOUSING AND
EDUCATIONAL
OPPORTUNITY

- In the places where the youth or their friends stayed, ...
 - Was it unsafe to live in, such as dangerous conditions, rodents, or overcrowding?
 - Were people regularly evicted?
 - Did their school have poor conditions or lack resources for all children?

DEFENSE ATTORNEYS MUST:

- Receive training on youth trauma, including manifestations of trauma, how to identify signs of trauma, and the impact of trauma on development and behavior,
- Learn how to comprehensively present evidence about a youth's trauma,
- Have access to skilled experts who can assess trauma and its impact and provide treatment, and
- Ensure that youth are adequately supported within a healing environment and not retraumatized while obtaining this evidence.

Judges Must Consider Youth’s Trafficking, Sexual Abuse, and Sexual Battery History When Evaluating the Degree of Criminal Sophistication

(Cal. Welf. & Inst. Code § 707(a)(3)(A)(ii))

At a transfer hearing, judges *must* also consider if the youth previously experienced trafficking, sexual abuse, or sexual battery,⁹ all of which are traumatic experiences.

“When evaluating [the degree of criminal sophistication exhibited by the minor], the juvenile court shall give weight to any relevant factor, including...**the status of the minor as a victim of human trafficking, sexual abuse, or sexual battery on the minor’s criminal sophistication.**” Cal. Welf. & Inst. Code § 707(a)(3)(A)(ii)

Understanding the Breadth of Human Trafficking

Traffickers might force youth to engage in common labor or commit criminal acts through force, fraud, or coercion.¹⁰ Traffickers may also force youth to perform commercial sex acts. The elements of force, fraud, or coercion are not required for a person under 18 to be a victim of sex trafficking, nor must there be a ‘third-party’ trafficker. The mere inducement of a child to engage in commercial sex is enough for the child to be considered a sex trafficking victim.¹¹

A child who is a victim of labor trafficking, including forced criminality, may experience the following at the hands of a third party which compelled them to provide labor or engage in criminal acts:

- **Force**—
 - Physical, psychological, or sexual violence
 - Threatening physical, psychological, or sexual violence
 - Constantly monitoring the youth’s behavior and whereabouts
 - Isolating the youth from loved ones
- **Fraud**—
 - Lying about employment opportunities, promises and perils, compensation, or work conditions
 - Emotionally manipulating with promises of love, marriage, or an imaginary future
 - Requiring repayment of an individual or family debt with no clear terms or end date
- **Coercion**—
 - Threats of serious harm against the youth or any person they care for
 - Threats to report the youth or their family to immigration authorities or law enforcement
 - Withholding or threatening to withhold basic necessities like food, shelter, clothing, or medical care
 - Confiscating identification or immigration documents

Most victims of human trafficking, especially youth, **do not view themselves as victims.** They often believe they are making their own independent decisions. Thus, it is **critical to ask probing questions to determine whether a trafficking situation exists.**

Congress Created the Subjective Victim Standard in 2008, which California has adopted: An element of forced labor can include the use or threatened use of ‘serious harm’ which is “any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a **reasonable person of the same background and in the same circumstances** to perform or to continue performing labor or services in order to avoid incurring that harm.” See 18 U.S.C. 1589 (c)(2) and Penal Code §§ 236.1 (h)(8).

California law also specifies that “**the total circumstances, including the age of the victim, the relationship between the victim and the trafficker or agents of the trafficker, and any handicap or disability of the victim**, shall be factors to consider in determining the presence of “deprivation or violation of the personal liberty of another,” “duress,” and “coercion” as described in this section.” See Penal Code §§ 236.1 (i).

To determine whether a child may be a victim of human trafficking by forced criminality, consider whether a similarly situated child of the same background and in the same circumstances would have felt compelled to engage in the crime in order to avoid the harm that would have been inflicted upon them.

Trafficking may present differently for every youth. The experiences of youth trafficking victims may range widely, including **sex trafficking, labor trafficking, and forced criminality**. Examples of trafficking include:

- An adult gang leader orders a youth to transport drugs, carry weapons, or commit violent acts against rival gang members and threatens them with physical violence or serious harm if they refuse.
- An older adult family member coerces a youth to participate in a drug trafficking ring or join a gang other family members are associated with.
- An extended family member allows a youth to live in their home and forces them to cook, clean, and care for younger cousins by beating them or threatening to beat them if they refuse.
- A smuggler helps a youth travel to the U.S. and threatens to harm their family abroad if they do not work for free.
- A neighbor welcomes a youth into their home and makes the youth participate in sexual activities in exchange for basic necessities like food, clothes, and shelter (often called “survival sex”).
- A business owner takes a youth’s identity paperwork and forces them to work to compensate for a family debt.
- A family member allows adults to engage in sexual acts with the youth in exchange for drugs.
- A drug dealer offers to erase a family member’s debt if the youth helps them commit a robbery or burglary.
- A coach convinces a youth to pose for pornographic photos in exchange for alcohol or drugs.
- An older adult entices a youth with gifts and promises of love while forcing them to engage in commercial sex acts with older adults.

Screening for Evidence of Human Trafficking

Judges are statutorily required to consider the evidence of human trafficking.¹² Evidence of any of the following may indicate experiences of human trafficking if a youth is:

- Relying on a non-guardian for basic necessities that their family is currently unable to provide them, such as food, shelter, clothing, and/or a sense of love and belonging
- Isolated from their family or community, prevented from attending school, or having their behavior monitored
- Acting in order to repay a debt (such as a family financial debt, money owed for illegal substances, transportation to this country, or immigration, travel, or identification documents)
- Acting out of fear of violence or to ensure their own safety or the safety of a family member or friend
- Working in a licit or illicit industry in conditions that are unsafe, unpaid, or in exchange for food or housing

- A member of a gang in which adult leaders are creating an environment where criminal activity is expected, encouraged, or required in order to avoid incurring a “violation,” which is physical violence as a punishment for refusing to carry-out orders.
- Being threatened or acting because they believe they have no choice but to comply with the demands made of them
- Exhibiting signs of trauma bonding, like professing loyalty to an older adult or a gang, mistrusting authority figures, or denying that they are a victim
- Unable to remove themselves from their current situation, whether because they feel pressure to stay or because they have nowhere else to go

Special Considerations for Youth Experiencing Forced Criminality

ASK YOURSELF:

Are the offenses the youth is charged with a symptom of their trafficking victimization?

The U.S. Department of State notes that “[t]rafficked individuals who are forced to commit a crime are commonly mistaken for criminals—rather than being identified as victims.”¹³ Youth who are forced or coerced into criminal activity by an older individual are trafficking victims. These youth would benefit from appropriate healing and support services for victims.¹⁴

The following charges, among others, may be manifestations of trafficking by forced criminality:

- Drug or weapons possession or sales (at the request of a trafficker)
- Assault or battery (either in self-defense or at the request of a trafficker)
- Theft (either to meet basic needs or at the request of a trafficker)
- Robbery or burglary
- Human trafficking
- Car-jacking or car theft
- Attempted murder or murder

Special Considerations for Youth with an Adult Codefendant

If the youth has an older codefendant, look for evidence that the youth is being trafficked. *The youth’s codefendant may be participating in human trafficking if the codefendant is:*

- Someone the youth is afraid of or unwilling to testify against out of loyalty or fear of retaliation
- A sophisticated actor who is savvy about the criminal justice system and may be pushing blame onto the youth
- Providing the youth or their family with physical and emotional security or protection within the community
- Withholding the youth’s immigration or identification documents
- Leading a gang that provides youth with a sense of community and belonging
- Lavishing the youth with gifts that they would otherwise be unable to afford
- Forcing the youth to work without proper training, safe work conditions, or pay
- Forcing the youth to participate in illegal activities (whether the basis of the current pending charges or in addition)
- Significantly older than the youth and/or has a formal or informal position of power and influence over the youth, such as an older sibling or cousin, a teacher or coach, or respected neighbor

REMEMBER:

- Committing criminal acts is a form of labor;
- Victim consent is not a defense to human trafficking nor does it negate a child's status as a victim;
- When determining whether a child may be a victim of human trafficking by forced criminality, look at the totality of the circumstances from the perspective of a similarly situated child of the same background, experiences, and circumstances.

Judges Must Keep the Case in Juvenile Court if there is Evidence the Alleged Victim Trafficked, Sexually Abused, or Sexually Battered the Youth

(Cal. Welf. & Inst. Code § 707.2)

If there is evidence that the alleged victim trafficked, sexually abused, or sexually battered the youth, the case **shall remain in** or be *returned* to juvenile court and the successful *treatment* and *rehabilitation* of youth shall be prioritized.¹⁵

The case may be transferred to criminal court **only if** there is *clear and convincing evidence* that the alleged victim *did not* traffic, sexually abuse, or sexually batter the youth.¹⁶

“Notwithstanding a finding made pursuant to paragraph (3) of subdivision (a) of Section 707 that a minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court, if the court, during a transfer hearing pursuant to Section 707, **receives evidence** that the minor was trafficked, sexually abused, or sexually battered by the alleged victim prior to or during the commission of the alleged offense, the minor shall be retained under the jurisdiction of the juvenile court unless the court finds by clear and convincing evidence that the person against whom the minor is accused of committing an offense did not traffic, sexually abuse, or sexually batter the minor.” (Cal. Welf. & Inst. Code § 707.2)

Screening for Evidence that Alleged Victim was Trafficking, Sexually Abusing or Sexually Battering the Youth

A police report or prosecution of the alleged victim is not required to prove that the youth was trafficked, sexually abused, or sexually battered by the alleged victim.

Evidence that the alleged victim perpetrated or participated in trafficking the youth may include:¹⁷

- medical reports of health conditions, including sexually transmitted diseases or injuries from violence or unsafe work conditions
- text/voice/social media messages, including between the youth and alleged victim or between the alleged victim and other adults
- phone records
- testimony from the youth, family, friends, or witnesses
- photos or videos of the youth, including pornography
- photos of the youth’s living conditions (such as in a vehicle, overcrowded/unsafe location)
- tattoos, branding, or markings on the youth’s body, including gang affiliations
- the youth’s identity documents in an unrelated adult’s possession
- the presence of a controlling and/or unrelated adult when receiving medical care
- objects found with the youth, including:
 - sexual paraphernalia, including multiple condoms, lubrication, etc.
 - large amounts of cash or pre-paid cards
 - hotel or motel keys or receipts
 - evidence of travel such as suitcases
 - multiple cell phones, electronic devices, or papers with names, phone numbers, addresses, and/or dollar amounts
 - weapons belonging to or provided by the alleged victim

New Requirements at Juvenile Transfer Hearings

In particular, examine the relationship between the alleged victim and the youth, including whether the alleged victim:

- Provided the youth or their family with physical and emotional security and protection within the community, including via gang membership
- Withheld the youth's immigration or identification documents
- Participated in leadership of a gang that provided the youth with a sense of community and belonging
- Lavished the youth with gifts that they would otherwise be unable to afford
- Paid the youth or a third party for labor or sexual acts performed by the youth
- Forced the youth to work without proper training, safe work conditions, or pay
- Forced the youth to participate in illegal activities (whether related or unrelated to the current pending charges)
- Is or was significantly older than the youth and/or had a formal or informal position of power and influence over the youth, such as an older sibling or cousin, a teacher or coach, or respected neighbor
- Created a community environment where the youth is or was fearful of speaking badly about the alleged victim or their networks out of concern for retaliation

Endnotes

¹ Stats. 2023, ch 716, § 1, eff. Jan. 1, 2024.

² Cal. Welf. & Inst. Code § 707(a)(3)(A)(ii) “(ii) When evaluating the criterion specified in clause (i), the juvenile court shall 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; the effect of the minor’s family and community environment; *the existence of childhood trauma*; the minor’s involvement in the child welfare or foster care system; and the status of the minor as a victim of human trafficking, sexual abuse, or sexual battery on the minor’s criminal sophistication.”

³ Vincent J. Felitti, et al., *Relationship of childhood abuse and household dysfunction to many of the leading causes of death in adults: The adverse childhood experiences (ACE) study*, 14(4) AM. J. OF PREVENTIVE MED. 245 (1998); Tracie O. Afifi, et al., *Confirmatory factor analysis of adverse childhood experiences (ACEs) among a community-based sample of parents and adolescents*. 20(1) BMC PEDIATRICS 178 (2020); David Finkelhor, et al, *A revised inventory of Adverse Childhood Experiences*, 48 CHILD ABUSE & NEGLECT, 13 (2015).

⁴ *Id.*

⁵ *Id.*

⁶ Pair of Aces Tree, Center for Community Resilience, Milken Institute School of Public Health, The George Washington University, https://publichealth.gwu.edu/sites/g/files/zaxdzs4586/files/2023-06/resource-description_pair-of-aces-tree.pdf; see also Ellis W, Dietz WH, Chen KD. Community Resilience: A Dynamic Model for Public Health 3.0. J Public Health Manag Pract. 2022 Jan-Feb 01;28(Suppl 1):S18-S26. doi: 10.1097/PHH.0000000000001413. PMID: 34797257; Pinderhughes, H., Davis, R., & Williams, M. (2015). Adverse community experiences and resilience: A framework for addressing and preventing community trauma. Oakland, CA: Prevention Institute.

⁷ Developed based on National Council of Juvenile and Family Court Judges, Think Trauma: A Training for Staff in Juvenile Justice Residential Settings: Module Four – Finding Your ACE Score, <https://www.ncjfcj.org/wp-content/uploads/2006/10/Finding-Your-Ace-Score.pdf>, 24 Oct. 2006; Ellis, Wendy DrPH, MPH; Dietz, William H. MD, PhD; Chen, Kuan-Lung Daniel DrPH, MPH. Community Resilience: A Dynamic Model for Public Health 3.0. Journal of Public Health Management and Practice 28(Supplement 1):p S18-S26, January/February 2022. | DOI: 10.1097/PHH.0000000000001413; Pinderhughes, H., Davis, R., & Williams, M. (2015). Adverse community experiences and resilience: A framework for addressing and preventing community trauma. Oakland, CA: Prevention Institute.

⁸ Cal. Welf. & Inst. Code § 707(a)(3)(A)(ii) “When evaluating the criterion specified in clause (i), the juvenile court shall 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; the effect of the minor’s family and community environment; *the existence of childhood trauma*; the minor’s involvement in the child welfare or foster care system; and the status of the minor as a victim of human trafficking, sexual abuse, or sexual battery on the minor’s criminal sophistication.”

⁹ Cal. Welf. & Inst. Code § 707(a)(3)(A)(ii).

¹⁰ Fact Sheet: Human Trafficking, Office on Trafficking in Persons; An Office of the Administration for Children and Families, Department of Health and Human Services, Doc No: OTIP-FS-18-01, Nov. 21, 2017, https://www.acf.hhs.gov/sites/default/files/documents/otip/fact_sheet_human_trafficking_fy18.pdf.

¹¹ Federal Trafficking Victims Protection Act, 18 U.S.C. 1591.

¹² Cal. Welf. & Inst. Code § 707(a)(3)(A)(ii) “When evaluating the criterion specified in clause (i), the juvenile court shall 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; the effect of the minor’s family and community environment; the existence of childhood trauma; the minor’s involvement in the child welfare or foster care system; and *the status of the minor as a victim of human trafficking, sexual abuse, or sexual battery on the minor’s criminal sophistication.*”

¹³ Office to Monitor and Combat Trafficking in Persons, U.S. Department of State, *The Use of Forced Criminality: Victims Hidden Behind the Crime*, June 2014, <https://2009-2017.state.gov/documents/organization/233938.pdf>.

¹⁴ *Trafficking, Incarceration, & Survival: How the Criminal Legal System Harms Victims*, Framework, July 20, 2022, <https://frameworkta.org/resource/trafficking-incarceration-survivor-how-the-criminal-legal-system-harms-victims/>

¹⁵ Cal. Welf. & Inst. Code § 707.2 “Notwithstanding a finding made pursuant to paragraph (3) of subdivision (a) of Section 707 that a minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court, if the court, during a transfer hearing pursuant to Section 707, receives evidence that the minor was trafficked, sexually abused, or sexually battered by the alleged victim prior to or during the commission of the alleged offense, the minor shall be retained under the jurisdiction of the juvenile court unless the court finds by clear and convincing evidence that the person against whom the minor is accused of committing an offense did not traffic, sexually abuse, or sexually batter the minor.”

¹⁶ Cal. Welf. & Inst. Code § 707.2.

¹⁷ UN News, *Securing evidence: The key to convicting human traffickers* (Mar. 5, 2022) <https://news.un.org/en/story/2022/03/1112712#:~:text=During%20UNODC%20workshops%20participants%20learn,be%20analysed%20by%20forensic%20scientists>
National District Attorneys Association & National District Attorneys Association Women Prosecutors Section, *National Human Trafficking Prosecution Best Practices Guide*, pp. 30-31, https://ndaa.org/wp-content/uploads/WPS-Best-Practice-Guide_Human-Trafficking-Jan.-2021-REVISED.pdf