

Introduced by Senator WylandFebruary 10, 2011

An act to amend Section 707 of the Welfare and Institutions Code, relating to minors.

LEGISLATIVE COUNSEL'S DIGEST

SB 247, as introduced, Wyland. Minors: fitness hearing.

Existing law, enacted by initiative statute, enumerates specified crimes for which a minor 14 years of age or older may be prosecuted under the general law in a court of criminal jurisdiction, as specified. The initiative statute provides that any amendment of its provisions requires a $\frac{2}{3}$ vote of the membership of each house of the Legislature.

This bill would enact Izaiah's Law which would add both vehicular manslaughter while intoxicated and causing great bodily injury while driving intoxicated to those enumerated crimes. The bill would make other technical, nonsubstantive changes.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known and may be cited as
- 2 "Izaiah's Law."
- 3 SEC. 2. Section 707 of the Welfare and Institutions Code, as
- 4 amended by Section 97 of Chapter 178 of the Statutes of 2010, is
- 5 amended to read:
- 6 707. (a) (1) In any case in which a minor is alleged to be a
- 7 person described in subdivision (a) of Section 602 by reason of
- 8 the violation, when he or she was 16 years of age or older, of any

1 criminal statute or ordinance except those listed in subdivision (b),
2 upon motion of the petitioner made prior to the attachment of
3 jeopardy the court shall cause the probation officer to investigate
4 and submit a report on the behavioral patterns and social history
5 of the minor being considered for a determination of unfitness.
6 Following submission and consideration of the report, and of any
7 other relevant evidence that the petitioner or the minor may wish
8 to submit, the juvenile court may find that the minor is not a fit
9 and proper subject to be dealt with under the juvenile court law if
10 it concludes that the minor would not be amenable to the care,
11 treatment, and training program available through the facilities of
12 the juvenile court, based upon an evaluation of the following
13 criteria:

14 (A) The degree of criminal sophistication exhibited by the minor.

15 (B) Whether the minor can be rehabilitated prior to the
16 expiration of the juvenile court's jurisdiction.

17 (C) The minor's previous delinquent history.

18 (D) Success of previous attempts by the juvenile court to
19 rehabilitate the minor.

20 (E) The circumstances and gravity of the offense alleged in the
21 petition to have been committed by the minor.

22 A determination that the minor is not a fit and proper subject to
23 be dealt with under the juvenile court law may be based on any
24 one or a combination of the factors set forth above, which shall be
25 recited in the order of unfitness. In any case in which a hearing
26 has been noticed pursuant to this section, the court shall postpone
27 the taking of a plea to the petition until the conclusion of the fitness
28 hearing, and no plea that *already* may have been entered ~~already~~
29 shall constitute evidence at the hearing.

30 (2) (A) This paragraph shall apply to a minor alleged to be a
31 person described in Section 602 by reason of the violation, when
32 he or she has attained 16 years of age, of any felony offense when
33 the minor has been declared to be a ward of the court pursuant to
34 Section 602 on one or more prior occasions if both of the following
35 apply:

36 (i) The minor has previously been found to have committed two
37 or more felony offenses.

38 (ii) The offenses upon which the prior petition or petitions were
39 based were committed when the minor had attained 14 years of
40 age.

1 (B) Upon motion of the petitioner made prior to the attachment
2 of jeopardy the court shall cause the probation officer to investigate
3 and submit a report on the behavioral patterns and social history
4 of the minor being considered for a determination of unfitness.
5 Following submission and consideration of the report, and of any
6 other relevant evidence that the petitioner or the minor may wish
7 to submit, the minor shall be presumed to be not a fit and proper
8 subject to be dealt with under the juvenile court law unless the
9 juvenile court concludes, based upon evidence, which evidence
10 may be of extenuating or mitigating circumstances, that the minor
11 would be amenable to the care, treatment, and training program
12 available through the facilities of the juvenile court based upon an
13 evaluation of the following criteria:

14 (i) The degree of criminal sophistication exhibited by the minor.

15 (ii) Whether the minor can be rehabilitated prior to the expiration
16 of the juvenile court's jurisdiction.

17 (iii) The minor's previous delinquent history.

18 (iv) Success of previous attempts by the juvenile court to
19 rehabilitate the minor.

20 (v) The circumstances and gravity of the offense alleged in the
21 petition to have been committed by the minor.

22 A determination that the minor is a fit and proper subject to be
23 dealt with under the juvenile court law shall be based on a finding
24 of amenability after consideration of the criteria set forth above,
25 and findings therefore recited in the order as to each of the above
26 criteria that the minor is fit and proper under each and every one
27 of the above criteria. In making a finding of fitness, the court may
28 consider extenuating and mitigating circumstances in evaluating
29 each of the above criteria. In any case in which the hearing has
30 been noticed pursuant to this section, the court shall postpone the
31 taking of a plea to the petition until the conclusion of the fitness
32 hearing and no plea which *already* may have been entered ~~already~~
33 shall constitute evidence at the hearing. If the minor is found to
34 be a fit and proper subject to be dealt with under the juvenile court
35 law pursuant to this subdivision, the minor shall be committed to
36 placement in a juvenile hall, ranch camp, forestry camp, boot camp,
37 or secure juvenile home pursuant to Section 730, or in any
38 institution operated by the Department of Corrections and
39 Rehabilitation, Division of Juvenile Facilities.

(3) If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.

(b) Subdivision (c) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation of one of the following offenses:

(1) Murder.

(2) Arson, as provided in subdivision (a) or (b) of Section 451 of the Penal Code.

(3) Robbery.

(4) Rape with force, violence, or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) A lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.

(7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(8) An offense specified in subdivision (a) of Section 289 of the Penal Code.

(9) Kidnapping for ransom.

(10) Kidnapping for purposes of robbery.

(11) Kidnapping with bodily harm.

(12) Attempted murder.

(13) Assault with a firearm or destructive device.

(14) Assault by any means of force likely to produce great bodily injury.

(15) Discharge of a firearm into an inhabited or occupied building.

(16) An offense described in Section 1203.09 of the Penal Code.

(17) An offense described in Section 12022.5 or 12022.53 of the Penal Code.

(18) A felony offense in which the minor personally used a weapon described in any provision listed in Section 16590 of the Penal Code.

(19) A felony offense described in Section 136.1 or 137 of the Penal Code.

1 (20) Manufacturing, compounding, or selling one-half ounce
2 or more of a salt or solution of a controlled substance specified in
3 subdivision (e) of Section 11055 of the Health and Safety Code.

4 (21) A violent felony, as defined in subdivision (c) of Section
5 667.5 of the Penal Code, which also would constitute a felony
6 violation of subdivision (b) of Section 186.22 of the Penal Code.

7 (22) Escape, by the use of force or violence, from a county
8 juvenile hall, home, ranch, camp, or forestry camp in violation of
9 subdivision (b) of Section 871 if great bodily injury is intentionally
10 inflicted upon an employee of the juvenile facility during the
11 commission of the escape.

12 (23) Torture as described in Sections 206 and 206.1 of the Penal
13 Code.

14 (24) Aggravated mayhem, as described in Section 205 of the
15 Penal Code.

16 (25) Carjacking, as described in Section 215 of the Penal Code,
17 while armed with a dangerous or deadly weapon.

18 (26) Kidnapping for purposes of sexual assault, as punishable
19 in subdivision (b) of Section 209 of the Penal Code.

20 (27) Kidnapping as punishable in Section 209.5 of the Penal
21 Code.

22 (28) The offense described in subdivision (c) of Section 26100
23 of the Penal Code.

24 (29) The offense described in Section 18745 of the Penal Code.

25 (30) Voluntary manslaughter, as described in subdivision (a)
26 of Section 192 of the Penal Code.

27 (31) *Vehicular manslaughter while intoxicated, as described in*
28 *subdivision (a) or (b) of Section 191.5 of the Penal Code.*

29 (32) *Causing great bodily injury while driving under the*
30 *influence of any alcoholic beverage or drug.*

31 (c) With regard to a minor alleged to be a person described in
32 Section 602 by reason of the violation, when he or she was 14
33 years of age or older, of any of the offenses listed in subdivision
34 (b), upon motion of the petitioner made prior to the attachment of
35 jeopardy the court shall cause the probation officer to investigate
36 and submit a report on the behavioral patterns and social history
37 of the minor being considered for a determination of unfitness.
38 Following submission and consideration of the report, and of any
39 other relevant evidence that the petitioner or the minor may wish
40 to submit, the minor shall be presumed to be not a fit and proper

1 subject to be dealt with under the juvenile court law unless the
2 juvenile court concludes, based upon evidence, which evidence
3 may be of extenuating or mitigating circumstances, that the minor
4 would be amenable to the care, treatment, and training program
5 available through the facilities of the juvenile court based upon an
6 evaluation of each of the following criteria:

7 (1) The degree of criminal sophistication exhibited by the minor.

8 (2) Whether the minor can be rehabilitated prior to the expiration
9 of the juvenile court's jurisdiction.

10 (3) The minor's previous delinquent history.

11 (4) Success of previous attempts by the juvenile court to
12 rehabilitate the minor.

13 (5) The circumstances and gravity of the offenses alleged in the
14 petition to have been committed by the minor.

15 A determination that the minor is a fit and proper subject to be
16 dealt with under the juvenile court law shall be based on a finding
17 of amenability after consideration of the criteria set forth above,
18 and findings therefore recited in the order as to each of the above
19 criteria that the minor is fit and proper under each and every one
20 of the above criteria. In making a finding of fitness, the court may
21 consider extenuating or mitigating circumstances in evaluating
22 each of the above criteria. In any case in which a hearing has been
23 noticed pursuant to this section, the court shall postpone the taking
24 of a plea to the petition until the conclusion of the fitness hearing
25 and no plea which may have been entered already shall constitute
26 evidence at the hearing. If, pursuant to this subdivision, the minor
27 is found to be not a fit and proper subject for juvenile court
28 treatment and is tried in a court of criminal jurisdiction and found
29 guilty by the trier of fact, the judge may commit the minor to the
30 Department of Corrections and Rehabilitation, Division of Juvenile
31 Facilities, in lieu of sentencing the minor to the state prison, unless
32 the limitations specified in Section 1732.6 apply.

33 (d) (1) Except as provided in subdivision (b) of Section 602,
34 the district attorney or other appropriate prosecuting officer may
35 file an accusatory pleading in a court of criminal jurisdiction
36 against any minor 16 years of age or older who is accused of
37 committing an offense enumerated in subdivision (b).

38 (2) Except as provided in subdivision (b) of Section 602, the
39 district attorney or other appropriate prosecuting officer may file
40 an accusatory pleading against a minor 14 years of age or older in

1 a court of criminal jurisdiction in any case in which any one or
2 more of the following circumstances apply:

3 (A) The minor is alleged to have committed an offense that if
4 committed by an adult would be punishable by death or
5 imprisonment in the state prison for life.

6 (B) The minor is alleged to have personally used a firearm
7 during the commission or attempted commission of a felony, as
8 described in Section 12022.5 or 12022.53 of the Penal Code.

9 (C) The minor is alleged to have committed an offense listed
10 in subdivision (b) in which any one or more of the following
11 circumstances apply:

12 (i) The minor has previously been found to be a person described
13 in Section 602 by reason of the commission of an offense listed
14 in subdivision (b).

15 (ii) The offense was committed for the benefit of, at the direction
16 of, or in association with any criminal street gang, as defined in
17 subdivision (f) of Section 186.22 of the Penal Code, with the
18 specific intent to promote, further, or assist in criminal conduct by
19 gang members.

20 (iii) The offense was committed for the purpose of intimidating
21 or interfering with any other person's free exercise or enjoyment
22 of a right secured to him or her by the Constitution or laws of this
23 state or by the Constitution or laws of the United States and because
24 of the other person's race, color, religion, ancestry, national origin,
25 disability, gender, or sexual orientation, or because the minor
26 perceives that the other person has one or more of those
27 characteristics, as described in Title 11.6 (commencing with
28 Section 422.55) of Part 1 of the Penal Code.

29 (iv) The victim of the offense was 65 years of age or older, or
30 blind, deaf, quadriplegic, paraplegic, developmentally disabled,
31 or confined to a wheelchair, and that disability was known or
32 reasonably should have been known to the minor at the time of
33 the commission of the offense.

34 (3) Except as provided in subdivision (b) of Section 602, the
35 district attorney or other appropriate prosecuting officer may file
36 an accusatory pleading in a court of criminal jurisdiction against
37 any minor 16 years of age or older who is accused of committing
38 one or more of the following offenses, if the minor has previously
39 been found to be a person described in Section 602 by reason of

1 the violation of a felony offense, when he or she was 14 years of
2 age or older:

3 (A) A felony offense in which it is alleged that the victim of the
4 offense was 65 years of age or older, or blind, deaf, quadriplegic,
5 paraplegic, developmentally disabled, or confined to a wheelchair,
6 and that disability was known or reasonably should have been
7 known to the minor at the time of the commission of the offense.

8 (B) A felony offense committed for the purposes of intimidating
9 or interfering with any other person's free exercise or enjoyment
10 of a right secured to him or her by the Constitution or laws of this
11 state or by the Constitution or laws of the United States and because
12 of the other person's race, color, religion, ancestry, national origin,
13 disability, gender, or sexual orientation, or because the minor
14 perceived that the other person had one or more of those
15 characteristics, as described in Title 11.6 (commencing with
16 Section 422.55) of Part 1 of the Penal Code.

17 (C) The offense was committed for the benefit of, at the direction
18 of, or in association with any criminal street gang as prohibited by
19 Section 186.22 of the Penal Code.

20 (4) In any case in which the district attorney or other appropriate
21 prosecuting officer has filed an accusatory pleading against a minor
22 in a court of criminal jurisdiction pursuant to this subdivision, the
23 case shall then proceed according to the laws applicable to a
24 criminal case. In conjunction with the preliminary hearing as
25 provided in Section 738 of the Penal Code, the magistrate shall
26 make a finding that reasonable cause exists to believe that the
27 minor comes within this subdivision. If reasonable cause is not
28 established, the criminal court shall transfer the case to the juvenile
29 court having jurisdiction over the matter.

30 (5) For an offense for which the prosecutor may file the
31 accusatory pleading in a court of criminal jurisdiction pursuant to
32 this subdivision, but elects instead to file a petition in the juvenile
33 court, if the minor is subsequently found to be a person described
34 in subdivision (a) of Section 602, the minor shall be committed to
35 placement in a juvenile hall, ranch camp, forestry camp, boot camp,
36 or secure juvenile home pursuant to Section 730, or in any
37 institution operated by the Department of Corrections and
38 Rehabilitation, Division of Juvenile Facilities.

39 (6) If, pursuant to this subdivision, the minor is found to be not
40 a fit and proper subject for juvenile court treatment and is tried in

1 a court of criminal jurisdiction and found guilty by the trier of fact,
2 the judge may commit the minor to the Department of Corrections
3 and Rehabilitation, Division of Juvenile Facilities, in lieu of
4 sentencing the minor to the state prison, unless the limitations
5 specified in Section 1732.6 apply.

6 (e) A report submitted by a probation officer pursuant to this
7 section regarding the behavioral patterns and social history of the
8 minor being considered for a determination of unfitness shall
9 include any written or oral statement offered by the victim, the
10 victim's parent or guardian if the victim is a minor, or if the victim
11 has died, the victim's next of kin, as authorized by subdivision (b)
12 of Section 656.2. Victims' statements shall be considered by the
13 court to the extent they are relevant to the court's determination
14 of unfitness.

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