

AMENDED IN SENATE MARCH 5, 2014

**SENATE BILL**

**No. 838**

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**Introduced by Senator Beall**  
(Coauthor: Assembly Member Maienschein)

January 6, 2014

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An act to *add Section 290.1 to the Penal Code, and to amend Section 647 Sections 676 and 707 of the Penal Welfare and Institutions Code, relating to disorderly conduct juveniles.*

LEGISLATIVE COUNSEL'S DIGEST

SB 838, as amended, Beall. ~~Disorderly conduct. Juveniles.~~

*Existing law makes it an offense for a person to willfully threaten to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, and causes that person reasonably to be in fear for his or her own safety or for his or her immediate family's safety. Existing law makes it an offense for a person who uses a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another, identifiable person who may be in a state of full or partial undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, in any area in which that other person has a reasonable expectation of privacy, with the intent to invade the privacy of that other person.*

*This bill would make it an offense for a person who, with the intent to intimidate, embarrass, or harass another person, by means of an electronic communication device, and without consent of the other*

person, electronically distributes, publishes, e-mails, hyperlinks, or makes available for downloading, a digital image of a sexual nature of another person, or shows or shares a photograph of the intimate body parts of that person, or an electronic message of a harassing nature about another person, which would be likely to intimidate, harass, or produce embarrassment. The bill would provide that the offense is punishable by imprisonment for up to one year in a county jail, by a fine of not more than \$1,000, or by both that fine and imprisonment. The bill would provide that if the material is of a sexual nature and identifies a minor, or shows intimate body parts, as defined, of the minor, the offense would be punishable by imprisonment in the state prison for 16 months, or 2 years or 3 years, or in a county jail for up to one year, or by a fine up to \$10,000, or by both the fine and imprisonment.

By creating new crimes, this bill would impose a state-mandated local program.

Under existing law, as amended by Proposition 21, an initiative statute approved by the voters at the March 7, 2000, statewide primary election, juvenile court hearings are closed to the public, except for juvenile court hearings alleging the commission of specified felonies. The Legislature may amend Proposition 21 by a statute passed in each house by a  $\frac{2}{3}$  vote.

This bill would add to that list of felonies, to which the public may be admitted for the hearing, certain sex offenses accomplished because the person is prevented from resisting by any intoxicating, anesthetizing, or controlled substance, or when the victim is at the time incapable, because of mental disorder or developmental or physical disability, of giving consent, and this is known or reasonably should be known to the person committing the offense. The bill would also add to that list of felonies additional specified sex offenses and a sexual offense where the offender used social media to identify, intimidate, harass, humiliate, or bully the victim.

Existing law provides that any person under 18 years of age who commits a crime is within the jurisdiction of the juvenile court, except as specified. Existing law, as amended by Proposition 21, enumerates certain crimes for which a minor 14 years of age or older may be prosecuted under the general law in a court of criminal jurisdiction.

This bill would add to that list of crimes, for which a minor 14 years of age or older may be prosecuted under the general law in a court of criminal jurisdiction, certain sex offenses accomplished because the

person is prevented from resisting by any intoxicating, anesthetizing, or controlled substance, or when the victim is at the time incapable, because of mental disorder or developmental or physical disability, of giving consent, and this is known or reasonably should be known to the person committing the offense, and a sexual offense where the offender used social media to identify, intimidate, harass, humiliate, or bully the victim.

Because this bill would amend Proposition 21, it would require a <sup>2</sup>/<sub>3</sub> vote.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Existing law provides that a person is guilty of disorderly conduct, a misdemeanor, based on various acts, including when a person solicits or agrees to engage in or engages in any act of prostitution, as specified.

~~This bill would make technical, nonsubstantive changes to that provision.~~

Vote: ~~majority~~<sup>2</sup>/<sub>3</sub>. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-yes.

*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 *Audrie’s Law.*
- 3 SEC. 2. Section 290.1 is added to the Penal Code, to read:
- 4 290.1. (a) Every person who, with the intent to intimidate,
- 5 embarrass, or harass another person, by means of an electronic
- 6 communication device, and without consent of the other person,
- 7 electronically distributes, publishes, e-mails, hyperlinks, or makes
- 8 available for downloading, a digital image of a sexual nature of
- 9 another person, or shows or shares a photograph of the intimate
- 10 body parts of that person, or an electronic message of a harassing
- 11 nature about another person, which would be likely to intimidate,
- 12 harass, or produce embarrassment, is guilty of a misdemeanor
- 13 punishable by up to one year in a county jail, by a fine of not more
- 14 than one thousand dollars (\$1,000), or by both that fine and
- 15 imprisonment.

1 (b) Every person who engages in behavior described in  
2 subdivision (a), and the material distributed identifies a minor and  
3 is of a sexual nature, or shows the intimate body parts of a minor,  
4 is guilty of a felony and shall be punished by imprisonment in the  
5 state prison for 16 months, or two years or three years, or in a  
6 county jail for not exceeding one year, or by a fine not exceeding  
7 ten thousand dollars (\$10,000), or by both the fine and  
8 imprisonment.

9 (c) For purposes of this section, the following definitions apply:

10 (1) “Electronic communication device” includes, but is not  
11 limited to, telephones, cell phones, smart phones, computers,  
12 Internet Web pages or sites, Internet phones, hybrid  
13 cellular-Internet-wireless devices, personal digital assistants  
14 (PDAs), video recorders, fax machines, or pagers.

15 (2) “Electronic communication” has the same meaning as the  
16 term is defined in Section 2510(12) of Title 18 of the United States  
17 Code.

18 (3) “Harass” means to knowingly and willfully engage in  
19 conduct directed at a specific person that a reasonable person  
20 would consider as seriously alarming, seriously annoying, seriously  
21 tormenting, or seriously terrorizing the person and that serves no  
22 legitimate purpose.

23 (4) “Of a harassing nature” means of a nature that a reasonable  
24 person would consider as seriously alarming, seriously annoying,  
25 seriously tormenting, or seriously terrorizing of the person and  
26 that serves no legitimate purpose.

27 (5) “Intimate body parts” means the breasts, genital area, groin,  
28 inner thighs, and buttocks.

29 SEC. 3. Section 676 of the Welfare and Institutions Code is  
30 amended to read:

31 676. (a) Unless requested by the minor concerning whom the  
32 petition has been filed and any parent or guardian present, the  
33 public shall not be admitted to a juvenile court hearing. Nothing  
34 in this section shall preclude the attendance of up to two family  
35 members of a prosecuting witness for the support of that witness,  
36 as authorized by Section 868.5 of the Penal Code. The judge or  
37 referee may nevertheless admit those persons he or she deems to  
38 have a direct and legitimate interest in the particular case or the  
39 work of the court. However, except as provided in subdivision (b),  
40 members of the public shall be admitted, on the same basis as they

1 may be admitted to trials in a court of criminal jurisdiction, to  
2 hearings concerning petitions filed pursuant to Section 602 alleging  
3 that a minor is a person described in Section 602 by reason of the  
4 violation of any one of the following offenses:

5 (1) Murder.

6 (2) Arson of an inhabited building.

7 (3) Robbery while armed with a dangerous or deadly weapon.

8 (4) Rape with force or violence ~~or~~, threat of great bodily harm,  
9 *or when the person is prevented from resisting by any intoxicating,*  
10 *anesthetizing, or controlled substance, or when the victim is at the*  
11 *time incapable, because of mental disorder or developmental or*  
12 *physical disability, of giving consent, and this is known or*  
13 *reasonably should be known to the person committing the offense.*

14 (5) Sodomy by force, violence, duress, menace, ~~or~~ threat of  
15 great bodily harm, *or when the person is prevented from resisting*  
16 *by any intoxicating, anesthetizing, or controlled substance, or*  
17 *when the victim is at the time incapable, because of mental disorder*  
18 *or developmental or physical disability, of giving consent, and this*  
19 *is known or reasonably should be known to the person committing*  
20 *the offense.*

21 (6) Oral copulation by force, violence, duress, menace, ~~or~~ threat  
22 of great bodily harm, *or when the person is prevented from*  
23 *resisting by any intoxicating, anesthetizing, or controlled*  
24 *substance, or when the victim is at the time incapable, because of*  
25 *mental disorder or developmental or physical disability, of giving*  
26 *consent, and this is known or reasonably should be known to the*  
27 *person committing the offense.*

28 (7) Any offense specified in subdivision (a) *or* (e) of Section  
29 289 of the Penal Code.

30 (8) Kidnapping for ransom.

31 (9) Kidnapping for purpose of robbery.

32 (10) Kidnapping with bodily harm.

33 (11) Assault with intent to murder or attempted murder.

34 (12) Assault with a firearm or destructive device.

35 (13) Assault by any means of force likely to produce great bodily  
36 injury.

37 (14) Discharge of a firearm into an inhabited dwelling or  
38 occupied building.

39 (15) Any offense described in Section 1203.09 of the Penal  
40 Code.

- 1 (16) Any offense described in Section 12022.5 or 12022.53 of  
2 the Penal Code.
- 3 (17) Any felony offense in which a minor personally used a  
4 weapon described in any provision listed in Section 16590 of the  
5 Penal Code.
- 6 (18) Burglary of an inhabited dwelling house or trailer coach,  
7 as defined in Section 635 of the Vehicle Code, or the inhabited  
8 portion of any other building, if the minor previously has been  
9 adjudged a ward of the court by reason of the commission of any  
10 offense listed in this section, including an offense listed in this  
11 paragraph.
- 12 (19) Any felony offense described in Section 136.1 or 137 of  
13 the Penal Code.
- 14 (20) Any offense as specified in Sections 11351, 11351.5,  
15 11352, 11378, 11378.5, 11379, and 11379.5 of the Health and  
16 Safety Code.
- 17 (21) Criminal street gang activity which constitutes a felony  
18 pursuant to Section 186.22 of the Penal Code.
- 19 (22) Manslaughter as specified in Section 192 of the Penal Code.
- 20 (23) Driveby shooting or discharge of a weapon from or at a  
21 motor vehicle as specified in Sections 246, 247, and 26100 of the  
22 Penal Code.
- 23 (24) Any crime committed with an assault weapon, as defined  
24 in Section 30510 of the Penal Code, including possession of an  
25 assault weapon as specified in Section 30605 of the Penal Code.
- 26 (25) Carjacking, while armed with a dangerous or deadly  
27 weapon.
- 28 (26) Kidnapping, in violation of Section 209.5 of the Penal  
29 Code.
- 30 (27) Torture, as described in Sections 206 and 206.1 of the Penal  
31 Code.
- 32 (28) Aggravated mayhem, in violation of Section 205 of the  
33 Penal Code.
- 34 (29) *Any offense specified in subdivision (c) of Section 290.*
- 35 (30) *Any sex offense in which the offender uses social media,*  
36 *including, but not limited to, posting online photos and messages*  
37 *or sharing cellular photos or messages of the incident, to identify,*  
38 *intimidate, harass, humiliate, or bully the victim.*
- 39 (b) Where the petition filed alleges that the minor is a person  
40 described in Section 602 by reason of the commission of rape with

1 force or violence or great bodily harm; sodomy by force, violence,  
2 duress, menace, ~~or~~ threat of great bodily harm, *or when the person*  
3 *is prevented from resisting by any intoxicating, anesthetizing, or*  
4 *controlled substance, or when the victim is at the time incapable,*  
5 *because of mental disorder or developmental or physical disability,*  
6 *of giving consent, and this is known or reasonably should be known*  
7 *to the person committing the offense; oral copulation by force,*  
8 violence, duress, menace, ~~or~~ threat of great bodily harm, *or when*  
9 *the person is prevented from resisting by any intoxicating,*  
10 *anesthetizing, or controlled substance, or when the victim is at the*  
11 *time incapable, because of mental disorder or developmental or*  
12 *physical disability, of giving consent, and this is known or*  
13 *reasonably should be known to the person committing the offense;*  
14 ~~or~~ any offense specified in Section 289 or subdivision (c) of Section  
15 290 of the Penal Code, *or when the victim of a sexual offense is*  
16 *then identified, intimidated, harassed, humiliated, or bullied*  
17 *through social media, the use of smart phone photographs, or text*  
18 *messaging, members of the public shall not be admitted to the*  
19 hearing in either of the following instances:

20 (1) Upon a motion for a closed hearing by the district attorney,  
21 who shall make the motion if so requested by the victim.

22 (2) During the victim’s testimony, if, at the time of the offense  
23 the victim was under 16 years of age.

24 (c) The name of a minor found to have committed one of the  
25 offenses listed in subdivision (a) shall not be confidential, unless  
26 the court, for good cause, so orders. As used in this subdivision,  
27 “good cause” shall be limited to protecting the personal safety of  
28 the minor, a victim, or a member of the public. The court shall  
29 make a written finding, on the record, explaining why good cause  
30 exists to make the name of the minor confidential.

31 (d) Notwithstanding Sections 827 and 828 and subject to  
32 subdivisions (e) and (f), when a petition is sustained for any offense  
33 listed in subdivision (a), the charging petition, the minutes of the  
34 proceeding, and the orders of adjudication and disposition of the  
35 court that are contained in the court file shall be available for public  
36 inspection. Nothing in this subdivision shall be construed to  
37 authorize public access to any other documents in the court file.

38 (e) The probation officer or any party may petition the juvenile  
39 court to prohibit disclosure to the public of any file or record. The  
40 juvenile court shall prohibit the disclosure if it appears that the

1 harm to the minor, victims, witnesses, or public from the public  
2 disclosure outweighs the benefit of public knowledge. However,  
3 the court shall not prohibit disclosure for the benefit of the minor  
4 unless the court makes a written finding that the reason for the  
5 prohibition is to protect the safety of the minor.

6 (f) Nothing in this section shall be applied to limit the disclosure  
7 of information as otherwise provided for by law.

8 (g) The juvenile court shall for each day that the court is in  
9 session, post in a conspicuous place which is accessible to the  
10 general public, a written list of hearings that are open to the general  
11 public pursuant to this section, the location of those hearings, and  
12 the time when the hearings will be held.

13 *SEC. 4. Section 707 of the Welfare and Institutions Code is*  
14 *amended to read:*

15 707. (a) (1) In any case in which a minor is alleged to be a  
16 person described in subdivision (a) of Section 602 by reason of  
17 the violation, when he or she was 16 years of age or older, of any  
18 criminal statute or ordinance except those listed in subdivision (b),  
19 upon motion of the petitioner made prior to the attachment of  
20 jeopardy the court shall cause the probation officer to investigate  
21 and submit a report on the behavioral patterns and social history  
22 of the minor being considered for a determination of unfitness.  
23 Following submission and consideration of the report, and of any  
24 other relevant evidence that the petitioner or the minor may wish  
25 to submit, the juvenile court may find that the minor is not a fit  
26 and proper subject to be dealt with under the juvenile court law if  
27 it concludes that the minor would not be amenable to the care,  
28 treatment, and training program available through the facilities of  
29 the juvenile court, based upon an evaluation of the following  
30 criteria:

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

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

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

35 (D) Success of previous attempts by the juvenile court to  
36 rehabilitate the minor.

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

39 A determination that the minor is not a fit and proper subject to  
40 be dealt with under the juvenile court law may be based on any

1 one or a combination of the factors set forth above, which shall be  
2 recited in the order of unfitness. In any case in which a hearing  
3 has been noticed pursuant to this section, the court shall postpone  
4 the taking of a plea to the petition until the conclusion of the fitness  
5 hearing, and no plea that may have been entered already shall  
6 constitute evidence at the hearing.

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

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

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

18 (B) Upon motion of the petitioner made prior to the attachment  
19 of jeopardy the court shall cause the probation officer to investigate  
20 and submit a report on the behavioral patterns and social history  
21 of the minor being considered for a determination of unfitness.  
22 Following submission and consideration of the report, and of any  
23 other relevant evidence that the petitioner or the minor may wish  
24 to submit, the minor shall be presumed to be not a fit and proper  
25 subject to be dealt with under the juvenile court law unless the  
26 juvenile court concludes, based upon evidence, which evidence  
27 may be of extenuating or mitigating circumstances, that the minor  
28 would be amenable to the care, treatment, and training program  
29 available through the facilities of the juvenile court based upon an  
30 evaluation of the following criteria:

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

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

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

35 (iv) Success of previous attempts by the juvenile court to  
36 rehabilitate the minor.

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

39 A determination that the minor is a fit and proper subject to be  
40 dealt with under the juvenile court law shall be based on a finding

1 of amenability after consideration of the criteria set forth above,  
2 and findings therefore recited in the order as to each of the above  
3 criteria that the minor is fit and proper under each and every one  
4 of the above criteria. In making a finding of fitness, the court may  
5 consider extenuating and mitigating circumstances in evaluating  
6 each of the above criteria. In any case in which the hearing has  
7 been noticed pursuant to this section, the court shall postpone the  
8 taking of a plea to the petition until the conclusion of the fitness  
9 hearing and no plea which may have been entered already shall  
10 constitute evidence at the hearing. If the minor is found to be a fit  
11 and proper subject to be dealt with under the juvenile court law  
12 pursuant to this subdivision, the minor shall be committed to  
13 placement in a juvenile hall, ranch camp, forestry camp, boot camp,  
14 or secure juvenile home pursuant to Section 730, or in any  
15 institution operated by the Department of Corrections and  
16 Rehabilitation, Division of Juvenile Facilities.

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

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

27 (1) Murder.

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

30 (3) Robbery.

31 (4) Rape with force, violence, ~~or~~ threat of great bodily harm,  
32 *or when the person is prevented from resisting by any intoxicating,*  
33 *anesthetizing, or controlled substance, or when the victim is at the*  
34 *time incapable, because of mental disorder or developmental or*  
35 *physical disability, of giving consent, and this is known or*  
36 *reasonably should be known to the person committing the offense.*

37 (5) Sodomy by force, violence, duress, menace, ~~or~~ threat of  
38 great bodily harm, *or when the person is prevented from resisting*  
39 *by any intoxicating, anesthetizing, or controlled substance, or*  
40 *when the victim is at the time incapable, because of mental disorder*

1 *or developmental or physical disability, of giving consent, and this*  
2 *is known or reasonably should be known to the person committing*  
3 *the offense.*

4 (6) A lewd or lascivious act as provided in subdivision (b) of  
5 Section 288 of the Penal Code, *or when the person is prevented*  
6 *from resisting by any intoxicating, anesthetizing, or controlled*  
7 *substance, or when the victim is at the time incapable, because of*  
8 *mental disorder or developmental or physical disability, of giving*  
9 *consent, and this is known or reasonably should be known to the*  
10 *person committing the offense.*

11 (7) Oral copulation by force, violence, duress, menace, ~~or~~ threat  
12 of great bodily harm, *or when the person is prevented from*  
13 *resisting by any intoxicating, anesthetizing, or controlled*  
14 *substance, or when the victim is at the time incapable, because of*  
15 *mental disorder or developmental or physical disability, of giving*  
16 *consent, and this is known or reasonably should be known to the*  
17 *person committing the offense.*

18 (8) An offense specified in subdivision (a) *or (e)* of Section 289  
19 of the Penal Code.

20 (9) Kidnapping for ransom.

21 (10) Kidnapping for purposes of robbery.

22 (11) Kidnapping with bodily harm.

23 (12) Attempted murder.

24 (13) Assault with a firearm or destructive device.

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

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

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

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

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

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

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

1 (21) A violent felony, as defined in subdivision (c) of Section  
2 667.5 of the Penal Code, which also would constitute a felony  
3 violation of subdivision (b) of Section 186.22 of the Penal Code.

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

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

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

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

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

17 (27) Kidnapping as punishable in Section 209.5 of the Penal  
18 Code.

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

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

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

24 (31) *Any sex offense in which the offender uses social media,*  
25 *including, but not limited to, posting online photos and messages*  
26 *or sharing cellular photos or messages of the incident, to identify,*  
27 *intimidate, harass, humiliate, or bully the victim.*

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

1 would be amenable to the care, treatment, and training program  
2 available through the facilities of the juvenile court based upon an  
3 evaluation of each of the following criteria:

- 4 (1) The degree of criminal sophistication exhibited by the minor.
- 5 (2) Whether the minor can be rehabilitated prior to the expiration  
6 of the juvenile court's jurisdiction.
- 7 (3) The minor's previous delinquent history.
- 8 (4) Success of previous attempts by the juvenile court to  
9 rehabilitate the minor.
- 10 (5) The circumstances and gravity of the offenses alleged in the  
11 petition to have been committed by the minor.

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

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

35 (2) Except as provided in subdivision (b) of Section 602, the  
36 district attorney or other appropriate prosecuting officer may file  
37 an accusatory pleading against a minor 14 years of age or older in  
38 a court of criminal jurisdiction in any case in which any one or  
39 more of the following circumstances apply:

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

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

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

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

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

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

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

32 (3) Except as provided in subdivision (b) of Section 602, the  
33 district attorney or other appropriate prosecuting officer may file  
34 an accusatory pleading in a court of criminal jurisdiction against  
35 any minor 16 years of age or older who is accused of committing  
36 one or more of the following offenses, if the minor has previously  
37 been found to be a person described in Section 602 by reason of  
38 the violation of a felony offense, when he or she was 14 years of  
39 age or older:

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

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

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

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

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

37 (6) If, pursuant to this subdivision, the minor is found to be not  
38 a fit and proper subject for juvenile court treatment and is tried in  
39 a court of criminal jurisdiction and found guilty by the trier of fact,  
40 the judge may commit the minor to the Department of Corrections

1 and Rehabilitation, Division of Juvenile Facilities, in lieu of  
2 sentencing the minor to the state prison, unless the limitations  
3 specified in Section 1732.6 apply.

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

13 *SEC. 5. No reimbursement is required by this act pursuant to*  
14 *Section 6 of Article XIII B of the California Constitution because*  
15 *the only costs that may be incurred by a local agency or school*  
16 *district will be incurred because this act creates a new crime or*  
17 *infraction, eliminates a crime or infraction, or changes the penalty*  
18 *for a crime or infraction, within the meaning of Section 17556 of*  
19 *the Government Code, or changes the definition of a crime within*  
20 *the meaning of Section 6 of Article XIII B of the California*  
21 *Constitution.*

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**All matter omitted in this version of the bill  
appears in the bill as introduced in the  
Senate January 6, 2014. (JR11)**