

AMENDED IN SENATE MAY 7, 2014
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AMENDED IN SENATE MARCH 5, 2014

SENATE BILL

No. 838

Introduced by Senator Beall

(Coauthors: Senators Anderson and Cannella)

(Coauthor: Assembly Member Coauthors: Assembly Members: Garcia, Gonzalez, Gorell, Maienschein, Quirk-Silva, and Waldron)

January 6, 2014

An act to add Section 290.1 to the Penal Code, and to amend Sections ~~676 and 707~~ 676, 730, and 790 of the Welfare and Institutions Code, relating to ~~juveniles~~: *crimes*.

LEGISLATIVE COUNSEL'S DIGEST

SB 838, as amended, Beall. ~~Juveniles~~: *Crimes: Sex offenses: juvenile hearings*.

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 require additional penalties if a person convicted of *or adjudicated to have committed* specified sex offenses, who, with the intent to identify, intimidate, harass, humiliate, or bully the victim, uses social media, including, but not limited to, posting photos online or sharing cellular telephone photos of the incident that resulted in the conviction, or posting messages online or sharing cellular telephone messages pertaining to the incident that resulted in the conviction. The bill would provide for imposition of an additional year of incarceration, or a fine not exceeding \$10,000, or both, if the sex offense conviction was for a felony, and would provide for imposition of an additional fine not exceeding \$5,000 if the sex offense conviction was for a misdemeanor.

By creating enhancements for existing 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 due to being rendered unconscious by any intoxicating, anesthetizing, or controlled substance, or when the victim is at the time incapable, because of a 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 due to being rendered unconscious by any intoxicating, anesthetizing, or controlled substance, or when the victim is at the time incapable, because of a 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.~~

Existing law provides that when a minor is adjudged a ward of the court, as specified, the court may order any of certain types of treatment, and as an additional alternative, may commit the minor to a juvenile home, ranch, camp, or forestry camp, or the county juvenile hall, as specified.

This bill would require the court, when a minor is adjudged a ward of the court for specified reasons, including, among others, the commission of certain sex offenses accomplished because the person is prevented from resisting due to being rendered unconscious by any intoxicating, anesthetizing, or controlled substance, or when the victim is at the time incapable, because of a disability, of giving consent, and this is known or reasonably should be known to the person committing the offense, to order the minor to out-of-home placement for a minimum of 2 years. The bill would provide that the placement may include commitment of the minor to a juvenile hall, juvenile home, ranch, camp, any institution operated by the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, or any other placement authorized by law, where the minor would receive treatment appropriate to the circumstances of his or her offense, including, but not limited to, sex offender treatment.

Existing law authorizes deferral of judgment for certain minors who have committed felony offenses if specified criteria are met.

This bill would add to those criteria that the offense charged is not rape, sodomy, oral copulation, or an act of sexual penetration, as specified, when the victim was prevented from resisting due to being rendered unconscious by any intoxicating, anesthetizing, or controlled substance, or when the victim was at the time incapable, because of mental disorder or developmental or physical disability, of giving consent, and that was known or reasonably should have been known to the minor at the time of the offense.

Because this bill would amend Proposition 21, it would require a $\frac{2}{3}$ 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.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: 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) A person convicted of *or adjudicated to have*
5 *committed* a sex offense listed in subdivision (c) of Section 290
6 who, with the intent to ~~identify~~, intimidate, harass, humiliate, or
7 bully the victim, uses social media, including, but not limited to,
8 posting photos online or sharing cellular telephone photos of the
9 incident that resulted in the conviction or posting messages online
10 or sharing cellular telephone messages pertaining to the incident
11 shall, in addition to any other punishment imposed for that
12 conviction, be punished by an additional term of incarceration or
13 additional fine pursuant to subdivision (b).

14 (b) (1) If the conviction for the offense listed in subdivision (c)
15 of Section 290 is for a felony, the offender shall be punished by
16 an additional consecutive year in prison, or by a fine not exceeding
17 ten thousand dollars (\$10,000), or by both imprisonment and that
18 fine.

19 (2) If the conviction for the offense listed in subdivision (c) of
20 Section 290 is for a misdemeanor, the offender shall be punished
21 by an additional fine not exceeding five thousand dollars (\$5,000).

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

24 676. (a) Unless requested by the minor concerning whom the
25 petition has been filed and any parent or guardian present, the
26 public shall not be admitted to a juvenile court hearing. Nothing
27 in this section shall preclude the attendance of up to two family
28 members of a prosecuting witness for the support of that witness,
29 as authorized by Section 868.5 of the Penal Code. The judge or
30 referee may nevertheless admit those persons he or she deems to

1 have a direct and legitimate interest in the particular case or the
2 work of the court. However, except as provided in subdivision (b),
3 members of the public shall be admitted, on the same basis as they
4 may be admitted to trials in a court of criminal jurisdiction, to
5 hearings concerning petitions filed pursuant to Section 602 alleging
6 that a minor is a person described in Section 602 by reason of the
7 violation of any one of the following offenses:

- 8 (1) Murder.
- 9 (2) Arson of an inhabited building.
- 10 (3) Robbery while armed with a dangerous or deadly weapon.
- 11 (4) Rape with force or violence, threat of great bodily harm, or
12 when the person is prevented from resisting due to being rendered
13 unconscious by any intoxicating, anesthetizing, or controlled
14 substance, or when the victim is at the time incapable, because of
15 a disability, of giving consent, and this is known or reasonably
16 should be known to the person committing the offense.
- 17 (5) Sodomy by force, violence, duress, menace, threat of great
18 bodily harm, or when the person is prevented from resisting due
19 to being rendered unconscious by any intoxicating, anesthetizing,
20 or controlled substance, or when the victim is at the time incapable,
21 because of a disability, of giving consent, and this is known or
22 reasonably should be known to the person committing the offense.
- 23 (6) Oral copulation by force, violence, duress, menace, threat
24 of great bodily harm, or when the person is prevented from resisting
25 due to being rendered unconscious by any intoxicating,
26 anesthetizing, or controlled substance, or when the victim is at the
27 time incapable, because of a disability, of giving consent, and this
28 is known or reasonably should be known to the person committing
29 the offense.
- 30 (7) Any offense specified in subdivision (a) or (e) of Section
31 289 of the Penal Code.
- 32 (8) Kidnapping for ransom.
- 33 (9) Kidnapping for purpose of robbery.
- 34 (10) Kidnapping with bodily harm.
- 35 (11) Assault with intent to murder or attempted murder.
- 36 (12) Assault with a firearm or destructive device.
- 37 (13) Assault by any means of force likely to produce great bodily
38 injury.
- 39 (14) Discharge of a firearm into an inhabited dwelling or
40 occupied building.

- 1 (15) Any offense described in Section 1203.09 of the Penal
2 Code.
- 3 (16) Any offense described in Section 12022.5 or 12022.53 of
4 the Penal Code.
- 5 (17) Any felony offense in which a minor personally used a
6 weapon described in any provision listed in Section 16590 of the
7 Penal Code.
- 8 (18) Burglary of an inhabited dwelling house or trailer coach,
9 as defined in Section 635 of the Vehicle Code, or the inhabited
10 portion of any other building, if the minor previously has been
11 adjudged a ward of the court by reason of the commission of any
12 offense listed in this section, including an offense listed in this
13 paragraph.
- 14 (19) Any felony offense described in Section 136.1 or 137 of
15 the Penal Code.
- 16 (20) Any offense as specified in Sections 11351, 11351.5,
17 11352, 11378, 11378.5, 11379, and 11379.5 of the Health and
18 Safety Code.
- 19 (21) Criminal street gang activity which constitutes a felony
20 pursuant to Section 186.22 of the Penal Code.
- 21 (22) Manslaughter as specified in Section 192 of the Penal Code.
- 22 (23) Driveby shooting or discharge of a weapon from or at a
23 motor vehicle as specified in Sections 246, 247, and 26100 of the
24 Penal Code.
- 25 (24) Any crime committed with an assault weapon, as defined
26 in Section 30510 of the Penal Code, including possession of an
27 assault weapon as specified in Section 30605 of the Penal Code.
- 28 (25) Carjacking, while armed with a dangerous or deadly
29 weapon.
- 30 (26) Kidnapping, in violation of Section 209.5 of the Penal
31 Code.
- 32 (27) Torture, as described in Sections 206 and 206.1 of the Penal
33 Code.
- 34 (28) Aggravated mayhem, in violation of Section 205 of the
35 Penal Code.
- 36 ~~(29) Any offense specified in subdivision (e) of Section 290.~~
- 37 ~~(30) Any sex offense in which the offender uses social media,~~
38 ~~including, but not limited to, posting online photos and messages~~
39 ~~or sharing cellular photos or messages of the incident, to identify,~~
40 ~~intimidate, harass, humiliate, or bully the victim.~~

1 (b) Where the petition filed alleges that the minor is a person
2 described in Section 602 by reason of the commission of rape with
3 force or violence or great bodily harm; sodomy by force, violence,
4 duress, menace, threat of great bodily harm, or when the person
5 is prevented from resisting by any intoxicating, anesthetizing, or
6 controlled substance, or when the victim is at the time incapable,
7 because of mental disorder or developmental or physical disability,
8 of giving consent, and this is known or reasonably should be known
9 to the person committing the offense; oral copulation by force,
10 violence, duress, menace, threat of great bodily harm, or when the
11 person is prevented from resisting by any intoxicating,
12 anesthetizing, or controlled substance, or when the victim is at the
13 time incapable, because of mental disorder or developmental or
14 physical disability, of giving consent, and this is known or
15 reasonably should be known to the person committing the offense;
16 any offense specified in Section 289 ~~or subdivision (e) of Section~~
17 ~~290 of the Penal Code, or when the victim of a sexual offense is~~
18 ~~then identified, intimidated, harassed, humiliated, or bullied~~
19 ~~through social media, the use of smart phone photographs, or text~~
20 ~~messaging;~~ members of the public shall not be admitted to the
21 hearing in either of the following instances:

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

24 (2) During the victim's testimony, if, at the time of the offense
25 the victim was under 16 years of age.

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

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

1 (e) The probation officer or any party may petition the juvenile
2 court to prohibit disclosure to the public of any file or record. The
3 juvenile court shall prohibit the disclosure if it appears that the
4 harm to the minor, victims, witnesses, or public from the public
5 disclosure outweighs the benefit of public knowledge. However,
6 the court shall not prohibit disclosure for the benefit of the minor
7 unless the court makes a written finding that the reason for the
8 prohibition is to protect the safety of the minor.

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

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

16 ~~SEC. 4. Section 707 of the Welfare and Institutions Code is~~
17 ~~amended to read:~~

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

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

35 ~~(B) Whether the minor can be rehabilitated prior to the~~
36 ~~expiration of the juvenile court's jurisdiction.~~

37 ~~(C) The minor's previous delinquent history.~~

38 ~~(D) Success of previous attempts by the juvenile court to~~
39 ~~rehabilitate the minor.~~

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

3 ~~A determination that the minor is not a fit and proper subject to~~
4 ~~be dealt with under the juvenile court law may be based on any~~
5 ~~one or a combination of the factors set forth above, which shall be~~
6 ~~recited in the order of unfitness. In any case in which a hearing~~
7 ~~has been noticed pursuant to this section, the court shall postpone~~
8 ~~the taking of a plea to the petition until the conclusion of the fitness~~
9 ~~hearing, and no plea that may have been entered already shall~~
10 ~~constitute evidence at the hearing.~~

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

17 ~~(i) The minor has previously been found to have committed two~~
18 ~~or more felony offenses.~~

19 ~~(ii) The offenses upon which the prior petition or petitions were~~
20 ~~based were committed when the minor had attained 14 years of~~
21 ~~age.~~

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

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

36 ~~(ii) Whether the minor can be rehabilitated prior to the expiration~~
37 ~~of the juvenile court's jurisdiction.~~

38 ~~(iii) The minor's previous delinquent history.~~

39 ~~(iv) Success of previous attempts by the juvenile court to~~
40 ~~rehabilitate the minor.~~

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

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

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

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

31 ~~(1) Murder.~~

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

34 ~~(3) Robbery.~~

35 ~~(4) Rape with force, violence, threat of great bodily harm, or~~
36 ~~when the person is prevented from resisting due to being rendered~~
37 ~~unconscious by any intoxicating, anesthetizing, or controlled~~
38 ~~substance, or when the victim is at the time incapable, because of~~
39 ~~a disability, of giving consent, and this is known or reasonably~~
40 ~~should be known to the person committing the offense.~~

- 1 ~~(5) Sodomy by force, violence, duress, menace, threat of great~~
2 ~~bodily harm, or when the person is prevented from resisting due~~
3 ~~to being rendered unconscious by any intoxicating, anesthetizing,~~
4 ~~or controlled substance, or when the victim is at the time incapable,~~
5 ~~because of a disability, of giving consent, and this is known or~~
6 ~~reasonably should be known to the person committing the offense.~~
- 7 ~~(6) A lewd or lascivious act as provided in subdivision (b) of~~
8 ~~Section 288 of the Penal Code, or when the person is prevented~~
9 ~~from resisting due to being rendered unconscious by any~~
10 ~~intoxicating, anesthetizing, or controlled substance, or when the~~
11 ~~victim is at the time incapable, because of a disability, of giving~~
12 ~~consent, and this is known or reasonably should be known to the~~
13 ~~person committing the offense.~~
- 14 ~~(7) Oral copulation by force, violence, duress, menace, threat~~
15 ~~of great bodily harm, or when the person is prevented from resisting~~
16 ~~due to being rendered unconscious by any intoxicating,~~
17 ~~anesthetizing, or controlled substance, or when the victim is at the~~
18 ~~time incapable, because of a disability, of giving consent, and this~~
19 ~~is known or reasonably should be known to the person committing~~
20 ~~the offense.~~
- 21 ~~(8) An offense specified in subdivision (a) or (c) of Section 289~~
22 ~~of the Penal Code.~~
- 23 ~~(9) Kidnapping for ransom.~~
- 24 ~~(10) Kidnapping for purposes of robbery.~~
- 25 ~~(11) Kidnapping with bodily harm.~~
- 26 ~~(12) Attempted murder.~~
- 27 ~~(13) Assault with a firearm or destructive device.~~
- 28 ~~(14) Assault by any means of force likely to produce great bodily~~
29 ~~injury.~~
- 30 ~~(15) Discharge of a firearm into an inhabited or occupied~~
31 ~~building.~~
- 32 ~~(16) An offense described in Section 1203.09 of the Penal Code.~~
- 33 ~~(17) An offense described in Section 12022.5 or 12022.53 of~~
34 ~~the Penal Code.~~
- 35 ~~(18) A felony offense in which the minor personally used a~~
36 ~~weapon described in any provision listed in Section 16590 of the~~
37 ~~Penal Code.~~
- 38 ~~(19) A felony offense described in Section 136.1 or 137 of the~~
39 ~~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 (e) 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) Any sex offense in which the offender uses social media,~~
28 ~~including, but not limited to, posting online photos and messages~~
29 ~~or sharing cellular photos or messages of the incident, to identify,~~
30 ~~intimidate, harass, humiliate, or bully the victim.~~
31 ~~(e) 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.~~

15 *SEC. 4. Section 730 of the Welfare and Institutions Code is*
16 *amended to read:*

17 730. (a) When a minor is adjudged a ward of the court on the
18 ground that he or she is a person described by Section 602, the
19 court may order any of the types of treatment referred to in Section
20 727, and as an additional alternative, may commit the minor to a
21 juvenile home, ranch, camp, or forestry camp. If there is no county
22 juvenile home, ranch, camp, or forestry camp within the county,
23 the court may commit the minor to the county juvenile hall.

24 (b) When a ward described in subdivision (a) is placed under
25 the supervision of the probation officer or committed to the care,
26 custody, and control of the probation officer, the court may make
27 any and all reasonable orders for the conduct of the ward including
28 the requirement that the ward go to work and earn money for the
29 support of his or her dependents or to effect reparation and in either
30 case that the ward keep an account of his or her earnings and report
31 the same to the probation officer and apply these earnings as
32 directed by the court. The court may impose and require any and
33 all reasonable conditions that it may determine fitting and proper
34 to the end that justice may be done and the reformation and
35 rehabilitation of the ward enhanced.

36 (c) When a ward described in subdivision (a) is placed under
37 the supervision of the probation officer or committed to the care,
38 custody, and control of the probation officer, and is required as a
39 condition of probation to participate in community service or
40 graffiti cleanup, the court may impose a condition that if the minor

1 unreasonably fails to attend or unreasonably leaves prior to
2 completing the assigned daily hours of community service or
3 graffiti cleanup, a law enforcement officer may take the minor into
4 custody for the purpose of returning the minor to the site of the
5 community service or graffiti cleanup.

6 *(d) When a minor is adjudged a ward of the court on the ground*
7 *that he or she is a person described by Section 602 by reason of*
8 *the commission of rape, sodomy, oral copulation, or an act of*
9 *sexual penetration specified in Section 289 of the Penal Code,*
10 *when the victim was prevented from resisting due to being rendered*
11 *unconscious by any intoxicating, anesthetizing, or controlled*
12 *substance, or when the victim was at the time incapable, because*
13 *of mental disorder or developmental or physical disability, of*
14 *giving consent, and that was known or reasonably should have*
15 *been known to the minor at the time of the offense, the court shall*
16 *order the minor to out-of-home placement for a minimum of two*
17 *years, which may include commitment of the minor to a juvenile*
18 *hall, juvenile home, ranch, camp, any institution operated by the*
19 *Department of Corrections and Rehabilitation, Division of Juvenile*
20 *Facilities, or any other placement authorized by law, where the*
21 *minor shall receive treatment appropriate to the circumstances of*
22 *his or her offense, including, but not limited to, sex offender*
23 *treatment.*

24 *SEC. 5. Section 790 of the Welfare and Institutions Code is*
25 *amended to read:*

26 790. (a) Notwithstanding Section 654 or 654.2, or any other
27 provision of law, this article shall apply whenever a case is before
28 the juvenile court for a determination of whether a minor is a
29 person described in Section 602 because of the commission of a
30 felony offense, if all of the following circumstances apply:

31 (1) The minor has not previously been declared to be a ward of
32 the court for the commission of a felony offense.

33 (2) The offense charged is not one of the offenses enumerated
34 in subdivision (b) of Section 707.

35 (3) The minor has not previously been committed to the custody
36 of the ~~Youth Authority~~ *Division of Juvenile Facilities.*

37 (4) The minor's record does not indicate that probation has ever
38 been revoked without being completed.

39 (5) The minor is at least 14 years of age at the time of the
40 hearing.

1 (6) The minor is eligible for probation pursuant to Section
2 1203.06 of the Penal Code.

3 (7) *The offense charged is not rape, sodomy, oral copulation,*
4 *or an act of sexual penetration specified in Section 289 of the Penal*
5 *Code when the victim was prevented from resisting due to being*
6 *rendered unconscious by any intoxicating, anesthetizing, or*
7 *controlled substance, or when the victim was at the time incapable,*
8 *because of mental disorder or developmental or physical disability,*
9 *of giving consent, and that was known or reasonably should have*
10 *been known to the minor at the time of the offense.*

11 (b) The prosecuting attorney shall review his or her file to
12 determine whether or not paragraphs (1) to ~~(6)~~; (7), inclusive, of
13 subdivision (a) apply. If the minor is found eligible for deferred
14 entry of judgment, the prosecuting attorney shall file a declaration
15 in writing with the court or state for the record the grounds upon
16 which the determination is based, and shall make this information
17 available to the minor and his or her attorney. Upon a finding that
18 the minor is also suitable for deferred entry of judgment and would
19 benefit from education, treatment, and rehabilitation efforts, the
20 court may grant deferred entry of judgment. Under this procedure,
21 the court may set the hearing for deferred entry of judgment at the
22 initial appearance under Section 657. The court shall make findings
23 on the record that a minor is appropriate for deferred entry of
24 judgment pursuant to this article in any case where deferred entry
25 of judgment is granted.

26 ~~SEC. 5.~~

27 *SEC. 6.* No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.