

AMENDED IN SENATE MAY 27, 2014

AMENDED IN SENATE MAY 7, 2014

AMENDED IN SENATE APRIL 10, 2014

AMENDED IN SENATE MARCH 5, 2014

SENATE BILL

No. 838

Introduced by Senator Beall

(Coauthors: Senators Anderson and Cannella)

(Coauthors: ~~Assembly Members~~ *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, 730, and 790 of the Welfare and Institutions Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 838, as amended, Beall. 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 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.

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, *or any institution operated by the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, or any other placement authorized by law, a county juvenile probation department*, 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 intimidate, harass, humiliate, or bully the
- 7 victim, uses social media, including, but not limited to, posting
- 8 ~~photos~~ *photographs* online or sharing cellular telephone ~~photos~~
- 9 *photographs* of the incident that resulted in the conviction or

1 posting messages online or sharing cellular telephone messages
2 pertaining to the incident shall, in addition to any other punishment
3 imposed for that conviction, be punished by an additional term of
4 incarceration or additional fine pursuant to subdivision (b).

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

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

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

15 676. (a) Unless requested by the minor concerning whom the
16 petition has been filed and any parent or guardian present, the
17 public shall not be admitted to a juvenile court hearing. Nothing
18 in this section shall preclude the attendance of up to two family
19 members of a prosecuting witness for the support of that witness,
20 as authorized by Section 868.5 of the Penal Code. The judge or
21 referee may nevertheless admit those persons he or she deems to
22 have a direct and legitimate interest in the particular case or the
23 work of the court. However, except as provided in subdivision (b),
24 members of the public shall be admitted, on the same basis as they
25 may be admitted to trials in a court of criminal jurisdiction, to
26 hearings concerning petitions filed pursuant to Section 602 alleging
27 that a minor is a person described in Section 602 by reason of the
28 violation of any one of the following offenses:

29 (1) Murder.

30 (2) Arson of an inhabited building.

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

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

38 (5) Sodomy by force, violence, duress, menace, threat of great
39 bodily harm, or when the person is prevented from resisting due
40 to being rendered unconscious by any intoxicating, anesthetizing,

- 1 or controlled substance, or when the victim is at the time incapable,
2 because of a disability, of giving consent, and this is known or
3 reasonably should be known to the person committing the offense.
- 4 (6) Oral copulation by force, violence, duress, menace, threat
5 of great bodily harm, or when the person is prevented from resisting
6 due to being rendered unconscious by any intoxicating,
7 anesthetizing, or controlled substance, or when the victim is at the
8 time incapable, because of a disability, of giving consent, and this
9 is known or reasonably should be known to the person committing
10 the offense.
- 11 (7) Any offense specified in subdivision (a) or (e) of Section
12 289 of the Penal Code.
- 13 (8) Kidnapping for ransom.
- 14 (9) Kidnapping for purpose of robbery.
- 15 (10) Kidnapping with bodily harm.
- 16 (11) Assault with intent to murder or attempted murder.
- 17 (12) Assault with a firearm or destructive device.
- 18 (13) Assault by any means of force likely to produce great bodily
19 injury.
- 20 (14) Discharge of a firearm into an inhabited dwelling or
21 occupied building.
- 22 (15) Any offense described in Section 1203.09 of the Penal
23 Code.
- 24 (16) Any offense described in Section 12022.5 or 12022.53 of
25 the Penal Code.
- 26 (17) Any felony offense in which a minor personally used a
27 weapon described in any provision listed in Section 16590 of the
28 Penal Code.
- 29 (18) Burglary of an inhabited dwelling house or trailer coach,
30 as defined in Section 635 of the Vehicle Code, or the inhabited
31 portion of any other building, if the minor previously has been
32 adjudged a ward of the court by reason of the commission of any
33 offense listed in this section, including an offense listed in this
34 paragraph.
- 35 (19) Any felony offense described in Section 136.1 or 137 of
36 the Penal Code.
- 37 (20) Any offense as specified in Sections 11351, 11351.5,
38 11352, 11378, 11378.5, 11379, and 11379.5 of the Health and
39 Safety Code.

1 (21) Criminal street gang activity which constitutes a felony
2 pursuant to Section 186.22 of the Penal Code.

3 (22) Manslaughter as specified in Section 192 of the Penal Code.

4 (23) Driveby shooting or discharge of a weapon from or at a
5 motor vehicle as specified in Sections 246, 247, and 26100 of the
6 Penal Code.

7 (24) Any crime committed with an assault weapon, as defined
8 in Section 30510 of the Penal Code, including possession of an
9 assault weapon as specified in Section 30605 of the Penal Code.

10 (25) Carjacking, while armed with a dangerous or deadly
11 weapon.

12 (26) Kidnapping, in violation of Section 209.5 of the Penal
13 Code.

14 (27) Torture, as described in Sections 206 and 206.1 of the Penal
15 Code.

16 (28) Aggravated mayhem, in violation of Section 205 of the
17 Penal Code.

18 (b) Where the petition filed alleges that the minor is a person
19 described in Section 602 by reason of the commission of rape with
20 force or violence or great bodily harm; sodomy by force, violence,
21 duress, menace, threat of great bodily harm, or when the person
22 is prevented from resisting by any intoxicating, anesthetizing, or
23 controlled substance, or when the victim is at the time incapable,
24 because of mental disorder or developmental or physical disability,
25 of giving consent, and this is known or reasonably should be known
26 to the person committing the offense; oral copulation by force,
27 violence, duress, menace, threat of great bodily harm, or when the
28 person is prevented from resisting by any intoxicating,
29 anesthetizing, or controlled substance, or when the victim is at the
30 time incapable, because of mental disorder or developmental or
31 physical disability, of giving consent, and this is known or
32 reasonably should be known to the person committing the offense;
33 any offense specified in Section 289 of the Penal Code, members
34 of the public shall not be admitted to the hearing in either of the
35 following instances:

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

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

1 (c) The name of a minor found to have committed one of the
2 offenses listed in subdivision (a) shall not be confidential, unless
3 the court, for good cause, so orders. As used in this subdivision,
4 “good cause” shall be limited to protecting the personal safety of
5 the minor, a victim, or a member of the public. The court shall
6 make a written finding, on the record, explaining why good cause
7 exists to make the name of the minor confidential.

8 (d) Notwithstanding Sections 827 and 828 and subject to
9 subdivisions (e) and (f), when a petition is sustained for any offense
10 listed in subdivision (a), the charging petition, the minutes of the
11 proceeding, and the orders of adjudication and disposition of the
12 court that are contained in the court file shall be available for public
13 inspection. Nothing in this subdivision shall be construed to
14 authorize public access to any other documents in the court file.

15 (e) The probation officer or any party may petition the juvenile
16 court to prohibit disclosure to the public of any file or record. The
17 juvenile court shall prohibit the disclosure if it appears that the
18 harm to the minor, victims, witnesses, or public from the public
19 disclosure outweighs the benefit of public knowledge. However,
20 the court shall not prohibit disclosure for the benefit of the minor
21 unless the court makes a written finding that the reason for the
22 prohibition is to protect the safety of the minor.

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

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

30 SEC. 4. Section 730 of the Welfare and Institutions Code is
31 amended to read:

32 730. (a) When a minor is adjudged a ward of the court on the
33 ground that he or she is a person described by Section 602, the
34 court may order any of the types of treatment referred to in Section
35 727, and as an additional alternative, may commit the minor to a
36 juvenile home, ranch, camp, or forestry camp. If there is no county
37 juvenile home, ranch, camp, or forestry camp within the county,
38 the court may commit the minor to the county juvenile hall.

39 (b) When a ward described in subdivision (a) is placed under
40 the supervision of the probation officer or committed to the care,

1 custody, and control of the probation officer, the court may make
2 any and all reasonable orders for the conduct of the ward including
3 the requirement that the ward go to work and earn money for the
4 support of his or her dependents or to effect reparation and in either
5 case that the ward keep an account of his or her earnings and report
6 the same to the probation officer and apply these earnings as
7 directed by the court. The court may impose and require any and
8 all reasonable conditions that it may determine fitting and proper
9 to the end that justice may be done and the reformation and
10 rehabilitation of the ward enhanced.

11 (c) When a ward described in subdivision (a) is placed under
12 the supervision of the probation officer or committed to the care,
13 custody, and control of the probation officer, and is required as a
14 condition of probation to participate in community service or
15 graffiti cleanup, the court may impose a condition that if the minor
16 unreasonably fails to attend or unreasonably leaves prior to
17 completing the assigned daily hours of community service or
18 graffiti cleanup, a law enforcement officer may take the minor into
19 custody for the purpose of returning the minor to the site of the
20 community service or graffiti cleanup.

21 (d) When a minor is adjudged a ward of the court on the ground
22 that he or she is a person described by Section 602 by reason of
23 the commission of rape, sodomy, oral copulation, or an act of
24 sexual penetration specified in Section 289 of the Penal Code,
25 when the victim was prevented from resisting due to being rendered
26 unconscious by any intoxicating, anesthetizing, or controlled
27 substance, or when the victim was at the time incapable, because
28 of mental disorder or developmental or physical disability, of
29 giving consent, and that was known or reasonably should have
30 been known to the minor at the time of the offense, the court shall
31 order the minor to out-of-home placement for a minimum of two
32 years, which may include commitment of the minor to a juvenile
33 hall, juvenile home, ranch, camp, *or* any institution operated by
34 ~~the Department of Corrections and Rehabilitation, Division of~~
35 ~~Juvenile Facilities, or any other placement authorized by law, a~~
36 *county juvenile probation department*, where the minor shall
37 receive treatment appropriate to the circumstances of his or her
38 offense, including, but not limited to, sex offender treatment.

39 SEC. 5. Section 790 of the Welfare and Institutions Code is
40 amended to read:

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

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

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

10 (3) The minor has not previously been committed to the custody
11 of the Division of Juvenile Facilities.

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

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

16 (6) The minor is eligible for probation pursuant to Section
17 1203.06 of the Penal Code.

18 (7) The offense charged is not rape, sodomy, oral copulation,
19 or an act of sexual penetration specified in Section 289 of the Penal
20 Code when the victim was prevented from resisting due to being
21 rendered unconscious by any intoxicating, anesthetizing, or
22 controlled substance, or when the victim was at the time incapable,
23 because of mental disorder or developmental or physical disability,
24 of giving consent, and that was known or reasonably should have
25 been known to the minor at the time of the offense.

26 (b) The prosecuting attorney shall review his or her file to
27 determine whether or not paragraphs (1) to (7), inclusive, of
28 subdivision (a) apply. If the minor is found eligible for deferred
29 entry of judgment, the prosecuting attorney shall file a declaration
30 in writing with the court or state for the record the grounds upon
31 which the determination is based, and shall make this information
32 available to the minor and his or her attorney. Upon a finding that
33 the minor is also suitable for deferred entry of judgment and would
34 benefit from education, treatment, and rehabilitation efforts, the
35 court may grant deferred entry of judgment. Under this procedure,
36 the court may set the hearing for deferred entry of judgment at the
37 initial appearance under Section 657. The court shall make findings
38 on the record that a minor is appropriate for deferred entry of
39 judgment pursuant to this article in any case where deferred entry
40 of judgment is granted.

1 SEC. 6. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

O