

AMENDED IN ASSEMBLY JULY 2, 2014

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 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 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~~ *photographs* online or sharing cellular telephone ~~photos~~ *photographs* 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,~~ *a minor to complete a sex offender treatment program* when a minor is adjudged *or continued as* 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 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. specified sex offenses. The bill would require the court to consider certain factors, in addition to any other relevant information presented, in determining what type of sex offender treatment program is appropriate for the minor. By increasing the duties on county officials in implementing the treatment program requirement, this bill would impose a state-mandated local program.~~

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.~~

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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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 a sex offense listed in
5 subdivision (c) of Section 290 who, with the intent to intimidate,
6 harass, humiliate, or bully the victim, uses social media, including,
7 but not limited to, posting photographs online or sharing cellular
8 telephone photographs of the incident that resulted in the conviction
9 or posting messages online or sharing cellular telephone messages
10 pertaining to the incident shall, in addition to any other punishment
11 imposed for that conviction, be punished pursuant to subdivision
12 (b).

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

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

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

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

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

- 6 (1) Murder.
- 7 (2) Arson of an inhabited building.
- 8 (3) Robbery while armed with a dangerous or deadly weapon.
- 9 (4) Rape with force or violence, threat of great bodily harm, or
10 when the person is prevented from resisting due to being rendered
11 unconscious by any intoxicating, anesthetizing, or controlled
12 substance, or when the victim is at the time incapable, because of
13 a disability, of giving consent, and this is known or reasonably
14 should be known to the person committing the offense.
- 15 (5) Sodomy by force, violence, duress, menace, threat of great
16 bodily harm, or when the person is prevented from resisting due
17 to being rendered unconscious by any intoxicating, anesthetizing,
18 or controlled substance, or when the victim is at the time incapable,
19 because of a disability, of giving consent, and this is known or
20 reasonably should be known to the person committing the offense.
- 21 (6) Oral copulation by force, violence, duress, menace, threat
22 of great bodily harm, or when the person is prevented from resisting
23 due to being rendered unconscious by any intoxicating,
24 anesthetizing, or controlled substance, or when the victim is at the
25 time incapable, because of a disability, of giving consent, and this
26 is known or reasonably should be known to the person committing
27 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 (b) Where the petition filed alleges that the minor is a person
35 described in Section 602 by reason of the commission of rape with
36 force or violence or great bodily harm; sodomy by force, violence,
37 duress, menace, threat of great bodily harm, or when the person
38 is prevented from resisting by any intoxicating, anesthetizing, or
39 controlled substance, or when the victim is at the time incapable,
40 because of mental disorder or developmental or physical disability,

1 of giving consent, and this is known or reasonably should be known
2 to the person committing the offense; oral copulation by force,
3 violence, duress, menace, threat of great bodily harm, or when the
4 person is prevented from resisting by any intoxicating,
5 anesthetizing, or controlled substance, or when the victim is at the
6 time incapable, because of mental disorder or developmental or
7 physical disability, of giving consent, and this is known or
8 reasonably should be known to the person committing the offense;
9 any offense specified in Section 289 of the Penal Code, members
10 of the public shall not be admitted to the hearing in either of the
11 following instances:

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

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

16 (c) The name of a minor found to have committed one of the
17 offenses listed in subdivision (a) shall not be confidential, unless
18 the court, for good cause, so orders. As used in this subdivision,
19 “good cause” shall be limited to protecting the personal safety of
20 the minor, a victim, or a member of the public. The court shall
21 make a written finding, on the record, explaining why good cause
22 exists to make the name of the minor confidential.

23 (d) Notwithstanding Sections 827 and 828 and subject to
24 subdivisions (e) and (f), when a petition is sustained for any offense
25 listed in subdivision (a), the charging petition, the minutes of the
26 proceeding, and the orders of adjudication and disposition of the
27 court that are contained in the court file shall be available for public
28 inspection. Nothing in this subdivision shall be construed to
29 authorize public access to any other documents in the court file.

30 (e) The probation officer or any party may petition the juvenile
31 court to prohibit disclosure to the public of any file or record. The
32 juvenile court shall prohibit the disclosure if it appears that the
33 harm to the minor, victims, witnesses, or public from the public
34 disclosure outweighs the benefit of public knowledge. However,
35 the court shall not prohibit disclosure for the benefit of the minor
36 unless the court makes a written finding that the reason for the
37 prohibition is to protect the safety of the minor.

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

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

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

8 730. (a) When a minor is adjudged a ward of the court on the
9 ground that he or she is a person described by Section 602, the
10 court may order any of the types of treatment referred to in Section
11 727, and as an additional alternative, may commit the minor to a
12 juvenile home, ranch, camp, or forestry camp. If there is no county
13 juvenile home, ranch, camp, or forestry camp within the county,
14 the court may commit the minor to the county juvenile hall.

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

27 (c) When a ward described in subdivision (a) is placed under
28 the supervision of the probation officer or committed to the care,
29 custody, and control of the probation officer, and is required as a
30 condition of probation to participate in community service or
31 graffiti cleanup, the court may impose a condition that if the minor
32 unreasonably fails to attend or unreasonably leaves prior to
33 completing the assigned daily hours of community service or
34 graffiti cleanup, a law enforcement officer may take the minor into
35 custody for the purpose of returning the minor to the site of the
36 community service or graffiti cleanup.

37 (d) When a minor is adjudged *or continued as* a ward of the
38 court on the ground that he or she is a person described by Section
39 602 by reason of the commission of rape, sodomy, oral copulation,
40 or an act of sexual penetration specified in Section 289 of the Penal

1 Code, when the victim was prevented from resisting due to being
2 rendered unconscious by any intoxicating, anesthetizing, or
3 controlled substance, or when the victim was at the time incapable,
4 because of mental disorder or developmental or physical disability,
5 of giving consent, and that was known or reasonably should have
6 been known to the minor at the time of the offense, the court shall
7 order the minor to out-of-home placement for a minimum of two
8 years, which may include commitment of the minor to a juvenile
9 hall, juvenile home, ranch, camp, or any institution operated by a
10 county juvenile probation department, where the minor shall
11 receive treatment appropriate to the circumstances of his or her
12 offense, including, but not limited to, sex offender treatment. *the*
13 *minor shall complete a sex offender treatment program. In*
14 *determining what type of treatment is appropriate, the court shall*
15 *consider all of the following: the seriousness and circumstances*
16 *of the offense, the vulnerability of the victim, the minor's criminal*
17 *history and prior attempts at rehabilitation, the sophistication of*
18 *the minor; the threat to public safety, the minor's likelihood of*
19 *reoffending, and any other relevant information presented.*

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

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

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

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

31 (3) The minor has not previously been committed to the custody
32 of the *Department of Corrections and Rehabilitation*, Division of
33 Juvenile Facilities.

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

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

38 (6) The minor is eligible for probation pursuant to Section
39 1203.06 of the Penal Code.

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

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

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

33 *SEC. 6. No reimbursement is required by this act pursuant to*
34 *Section 6 of Article XIII B of the California Constitution for certain*
35 *costs that may be incurred by a local agency or school district*
36 *because, in that regard, this act creates a new crime or infraction,*
37 *eliminates a crime or infraction, or changes the penalty for a crime*
38 *or infraction, within the meaning of Section 17556 of the*
39 *Government Code, or changes the definition of a crime within the*

1 *meaning of Section 6 of Article XIII B of the California*
2 *Constitution.*

3 *However, if the Commission on State Mandates determines that*
4 *this act contains other costs mandated by the state, reimbursement*
5 *to local agencies and school districts for those costs shall be made*
6 *pursuant to Part 7 (commencing with Section 17500) of Division*
7 *4 of Title 2 of the Government Code.*

O