

**Senate Bill No. 838**

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Passed the Senate August 26, 2014

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*Secretary of the Senate*

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Passed the Assembly August 25, 2014

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*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2014, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend Sections 676, 730, and 790 of the Welfare and Institutions Code, relating to juveniles.

## LEGISLATIVE COUNSEL'S DIGEST

SB 838, Beall. Juveniles: sex offenses.

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 a minor to complete a sex offender treatment program when a minor is adjudged or continued as a ward of the court for the commission of specified sex offenses, if the court determines, in consultation with the county probation officer, that suitable programs are available. 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. The bill would require a minor completing a sex offender treatment program to pay all or a portion of the reasonable costs of the program, as specified. 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

SECTION 1. This act shall be known, and may be cited, as Audrie's Law.

SEC. 2. Section 676 of the Welfare and Institutions Code is amended to read:

676. (a) Unless requested by the minor concerning whom the petition has been filed and any parent or guardian present, the public shall not be admitted to a juvenile court hearing. Nothing in this section shall preclude the attendance of up to two family members of a prosecuting witness for the support of that witness, as authorized by Section 868.5 of the Penal Code. The judge or referee may nevertheless admit those persons he or she deems to have a direct and legitimate interest in the particular case or the work of the court. However, except as provided in subdivision (b), members of the public shall be admitted, on the same basis as they may be admitted to trials in a court of criminal jurisdiction, to hearings concerning petitions filed pursuant to Section 602 alleging

that a minor is a person described in Section 602 by reason of the violation of any one of the following offenses:

- (1) Murder.
- (2) Arson of an inhabited building.
- (3) Robbery while armed with a dangerous or deadly weapon.
- (4) Rape with force or violence, threat of great bodily harm, or when 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.
- (5) Sodomy by force, violence, duress, menace, threat of great bodily harm, or when 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.
- (6) Oral copulation by force, violence, duress, menace, threat of great bodily harm, or when 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.
- (7) Any offense specified in subdivision (a) or (e) of Section 289 of the Penal Code.
- (8) Kidnapping for ransom.
- (9) Kidnapping for purpose of robbery.
- (10) Kidnapping with bodily harm.
- (11) Assault with intent to murder or attempted murder.
- (12) Assault with a firearm or destructive device.
- (13) Assault by any means of force likely to produce great bodily injury.
- (14) Discharge of a firearm into an inhabited dwelling or occupied building.
- (15) Any offense described in Section 1203.09 of the Penal Code.
- (16) Any offense described in Section 12022.5 or 12022.53 of the Penal Code.

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

(18) Burglary of an inhabited dwelling house or trailer coach, as defined in Section 635 of the Vehicle Code, or the inhabited portion of any other building, if the minor previously has been adjudged a ward of the court by reason of the commission of any offense listed in this section, including an offense listed in this paragraph.

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

(20) Any offense as specified in Sections 11351, 11351.5, 11352, 11378, 11378.5, 11379, and 11379.5 of the Health and Safety Code.

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

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

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

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

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

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

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

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

(b) Where the petition filed alleges that the minor is a person described in Section 602 by reason of the commission of rape with force or violence or great bodily harm; sodomy by force, violence, duress, menace, threat of great bodily harm, or when 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; oral copulation by force,

violence, duress, menace, threat of great bodily harm, or when 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; any offense specified in Section 289 of the Penal Code, members of the public shall not be admitted to the hearing in either of the following instances:

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

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

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

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

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

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

(g) The juvenile court shall for each day that the court is in session, post in a conspicuous place which is accessible to the general public, a written list of hearings that are open to the general

public pursuant to this section, the location of those hearings, and the time when the hearings will be held.

SEC. 3. Section 730 of the Welfare and Institutions Code is amended to read:

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

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

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

(d) When a minor is adjudged or continued as a ward of the court on the ground that he or she is a person described by Section 602 by reason of the commission of rape, sodomy, oral copulation, or an act of sexual penetration specified in Section 289 of the Penal Code, the court shall order the minor to complete a sex offender treatment program, if the court determines, in consultation with the county probation officer, that suitable programs are available.

In determining what type of treatment is appropriate, the court shall consider all of the following: the seriousness and circumstances of the offense, the vulnerability of the victim, the minor's criminal history and prior attempts at rehabilitation, the sophistication of the minor, the threat to public safety, the minor's likelihood of reoffending, and any other relevant information presented. If ordered by the court to complete a sex offender treatment program, the minor shall pay all or a portion of the reasonable costs of the sex offender treatment program after a determination is made of the ability of the minor to pay.

SEC. 4. Section 790 of the Welfare and Institutions Code is amended to read:

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

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

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

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

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

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

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

(7) The offense charged is not rape, sodomy, oral copulation, or an act of sexual penetration specified in Section 289 of the Penal Code 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.

(b) The prosecuting attorney shall review his or her file to determine whether or not paragraphs (1) to (7), inclusive, of

subdivision (a) apply. If the minor is found eligible for deferred entry of judgment, the prosecuting attorney shall file a declaration in writing with the court or state for the record the grounds upon which the determination is based, and shall make this information available to the minor and his or her attorney. Upon a finding that the minor is also suitable for deferred entry of judgment and would benefit from education, treatment, and rehabilitation efforts, the court may grant deferred entry of judgment. Under this procedure, the court may set the hearing for deferred entry of judgment at the initial appearance under Section 657. The court shall make findings on the record that a minor is appropriate for deferred entry of judgment pursuant to this article in any case where deferred entry of judgment is granted.

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













Approved \_\_\_\_\_, 2014

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*Governor*