

AMENDED IN SENATE MAY 19, 2015

AMENDED IN SENATE APRIL 20, 2015

SENATE BILL

No. 382

Introduced by Senator Lara
(Coauthor: Senator Leno)

February 24, 2015

An act to amend Section 1170.17 of the Penal Code, and to amend Section 707 of the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

SB 382, as amended, Lara. Juveniles: jurisdiction: sentencing.

Existing law provides that certain minors who have committed specified crimes may be prosecuted under the general law in a court of criminal jurisdiction if the juvenile court concludes, after the evaluation of 5 criteria, that the minor is not a fit and proper subject to be dealt with under the juvenile court law.

This bill would enumerate, within each of those 5 criteria, certain factors that may be considered.

Existing law generally provides that when a person is prosecuted for a criminal offense committed while he or she was under 18 years of age, he or she is subject to the same sentence as an adult convicted of the identical offense, except under certain circumstances, including, among others, when the conviction was for a type of offense that, in combination with the person's age at the time the offense was committed, would have made the person eligible for transfer to a court of criminal jurisdiction pursuant to a rebuttable presumption that the person is not a fit and proper subject to be dealt with under the juvenile court law, and the person prevails on a motion requesting that he or she receive a disposition under the juvenile court law. Existing law requires,

in order to prevail on that motion, the person to demonstrate, by a preponderance of the evidence, that he or she is a fit and proper subject to be dealt with under the juvenile court law, based upon 5 specified criteria.

This bill would enumerate, within each of the 5 criteria, certain factors that may be considered.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Section 1170.17 of the Penal Code is amended
2 to read:

3 1170.17. (a) When a person is prosecuted for a criminal offense
4 committed while he or she was under 18 years of age and the
5 prosecution was lawfully initiated in a court of criminal jurisdiction
6 without a prior finding that the person is not a fit and proper subject
7 to be dealt with under the juvenile court law, upon subsequent
8 conviction for any criminal offense, the person shall be subject to
9 the same sentence as an adult convicted of the identical offense,
10 in accordance with subdivision (a) of Section 1170.19, except
11 under the circumstances described in subdivision (b), (c), or (d).

12 (b) Where the conviction is for the type of offense which, in
13 combination with the person’s age at the time the offense was
14 committed, makes the person eligible for transfer to a court of
15 criminal jurisdiction, pursuant to a rebuttable presumption that the
16 person is not a fit and proper subject to be dealt with under the
17 juvenile court law, and the prosecution for the offense could not
18 lawfully be initiated in a court of criminal jurisdiction, then either
19 of the following shall apply:

20 (1) The person shall be subject to the same sentence as an adult
21 convicted of the identical offense in accordance with the provisions
22 set forth in subdivision (a) of Section 1170.19, unless the person
23 prevails upon a motion brought pursuant to paragraph (2).

24 (2) Upon a motion brought by the person, the court shall order
25 the probation department to prepare a written social study and
26 recommendation concerning the person’s fitness to be dealt with
27 under the juvenile court law and the court shall either conduct a
28 fitness hearing or suspend proceedings and remand the matter to
29 the juvenile court to prepare a social study and make a

1 determination of fitness. The person shall receive a disposition
2 under the juvenile court law only if the person demonstrates, by a
3 preponderance of the evidence, that he or she is a fit and proper
4 subject to be dealt with under the juvenile court law, based upon
5 each of the following five criteria:

6 (A) The degree of criminal sophistication exhibited by the
7 person. This may include, but is not limited to, consideration of
8 the person's age, maturity, intellectual capacity, and physical,
9 mental, and emotional health at the time of the offense, the person's
10 impetuosity or failure to appreciate risks and consequences of
11 criminal behavior, the effect of familial, adult, or peer pressure on
12 the person's actions, and the effect of the person's family and
13 community environment and childhood trauma on the person's
14 criminal sophistication.

15 (B) Whether the person can be rehabilitated prior to the
16 expiration of the juvenile court's jurisdiction. This may include,
17 but is not limited to, consideration of the person's potential to grow
18 and mature, and the person's growth and maturation since the time
19 that he or she committed the criminal offense.

20 (C) The person's previous delinquent history. This may include,
21 but is not limited to, consideration of the seriousness of the person's
22 previous delinquent history and the effect of the person's family
23 and community environment and childhood trauma on the person's
24 previous delinquent behavior.

25 (D) Success of previous attempts by the juvenile court to
26 rehabilitate the person. This may include, but is not limited to, an
27 analysis of the adequacy of the services previously provided to
28 address the person's needs.

29 (E) The circumstances and gravity of the offense for which the
30 person has been convicted. This may include, but is not limited
31 to, consideration of the actual behavior of the person, the mental
32 state of the person, the person's degree of involvement in the crime,
33 the level of harm actually caused by the person, and the person's
34 mental and emotional development.

35 If the court conducting the fitness hearing finds that the person
36 is not a fit and proper subject for juvenile court jurisdiction, then
37 the person shall be sentenced by the court where he or she was
38 convicted, in accordance with paragraph (1). If the court conducting
39 the hearing on fitness finds that the person is a fit and proper
40 subject for juvenile court jurisdiction, then the person shall be

1 subject to a disposition in accordance with subdivision (b) of
2 Section 1170.19.

3 (c) Where the conviction is for the type of offense which, in
4 combination with the person's age at the time the offense was
5 committed, makes the person eligible for transfer to a court of
6 criminal jurisdiction, pursuant to a rebuttable presumption that the
7 person is a fit and proper subject to be dealt with under the juvenile
8 court law, then the person shall be sentenced as follows:

9 (1) The person shall be subject to a disposition under the juvenile
10 court law, in accordance with the provisions of subdivision (b) of
11 Section 1170.19, unless the district attorney prevails upon a motion,
12 as described in paragraph (2).

13 (2) Upon a motion brought by the district attorney, the court
14 shall order the probation department to prepare a written social
15 study and recommendation concerning whether the person is a fit
16 and proper subject to be dealt with under the juvenile court law.
17 The court shall either conduct a fitness hearing or suspend
18 proceedings and remand the matter to the juvenile court for a
19 determination of fitness. The person shall be subject to a juvenile
20 disposition under the juvenile court law unless the district attorney
21 demonstrates, by a preponderance of the evidence, that the person
22 is not a fit and proper subject to be dealt with under the juvenile
23 court law, based upon the five criteria set forth in paragraph (2)
24 of subdivision (b). If the person is found to be not a fit and proper
25 subject to be dealt with under the juvenile court law, then the
26 person shall be sentenced in the court where he or she was
27 convicted, in accordance with the provisions set forth in subdivision
28 (a) of Section 1170.19. If the person is found to be a fit and proper
29 subject to be dealt with under the juvenile court law, the person
30 shall be subject to a disposition, in accordance with the provisions
31 of subdivision (b) of Section 1170.19.

32 (d) Where the conviction is for the type of offense which, in
33 combination with the person's age, does not make the person
34 eligible for transfer to a court of criminal jurisdiction, the person
35 shall be subject to a disposition in accordance with the provisions
36 of subdivision (b) of Section 1170.19.

37 SEC. 2. Section 707 of the Welfare and Institutions Code is
38 amended to read:

39 707. (a) (1) In any case in which a minor is alleged to be a
40 person described in subdivision (a) of Section 602 by reason of

1 the violation, when he or she was 16 years of age or older, of any
2 criminal statute or ordinance except those listed in subdivision (b),
3 upon motion of the petitioner made prior to the attachment of
4 jeopardy the court shall cause the probation officer to investigate
5 and submit a report on the behavioral patterns and social history
6 of the minor being considered for a determination of unfitness.
7 Following submission and consideration of the report, and of any
8 other relevant evidence that the petitioner or the minor may wish
9 to submit, the juvenile court may find that the minor is not a fit
10 and proper subject to be dealt with under the juvenile court law if
11 it concludes that the minor would not be amenable to the care,
12 treatment, and training program available through the facilities of
13 the juvenile court, based upon an evaluation of the criteria specified
14 in clause (i) of ~~each subparagraph~~ *subparagraphs* (A) to (E),
15 inclusive:

16 (A) (i) The degree of criminal sophistication exhibited by the
17 minor.

18 (ii) When evaluating the criterion specified in clause (i), the
19 juvenile court may consider any relevant factor, including, but not
20 limited to, the minor's age, maturity, intellectual capacity, and
21 physical, mental, and emotional health at the time of the alleged
22 offense, the minor's impetuosity or failure to appreciate risks and
23 consequences of criminal behavior, the effect of familial, adult,
24 or peer pressure on the minor's actions, and the effect of the
25 minor's family and community environment and childhood trauma
26 on the minor's criminal sophistication.

27 (B) (i) Whether the minor can be rehabilitated prior to the
28 expiration of the juvenile court's jurisdiction.

29 (ii) When evaluating the criterion specified in clause (i), the
30 juvenile court may consider any relevant factor, including, but not
31 limited to, the minor's potential to grow and mature.

32 (C) (i) The minor's previous delinquent history.

33 (ii) When evaluating the criterion specified in clause (i), the
34 juvenile court may consider any relevant factor, including, but not
35 limited to, the seriousness of the minor's previous delinquent
36 history and the effect of the minor's family and community
37 environment and childhood trauma on the minor's previous
38 delinquent behavior.

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

1 (ii) When evaluating the criterion specified in clause (i), the
2 juvenile court may consider any relevant factor, including, but not
3 limited to, the adequacy of the services previously provided to
4 address the minor's needs.

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

7 (ii) When evaluating the criterion specified in clause (i), the
8 juvenile court may consider any relevant factor, including, but not
9 limited to, the level of harm actually caused by the minor, and the
10 minor's mental and emotional development.

11 A determination that the minor is not a fit and proper subject to
12 be dealt with under the juvenile court law may be based on any
13 one or a combination of the factors set forth in clause (i) of ~~each~~
14 ~~subparagraph~~ *subparagraphs* (A) to (E), inclusive, which shall be
15 recited in the order of unfitness. In any case in which a hearing
16 has been noticed pursuant to this section, the court shall postpone
17 the taking of a plea to the petition until the conclusion of the fitness
18 hearing, and no plea that may have been entered already shall
19 constitute evidence at the hearing.

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

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

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

31 (B) Upon motion of the petitioner made prior to the attachment
32 of jeopardy the court shall cause the probation officer to investigate
33 and submit a report on the behavioral patterns and social history
34 of the minor being considered for a determination of unfitness.
35 Following submission and consideration of the report, and of any
36 other relevant evidence that the petitioner or the minor may wish
37 to submit, the minor shall be presumed to be not a fit and proper
38 subject to be dealt with under the juvenile court law unless the
39 juvenile court concludes, based upon evidence, which evidence
40 may be of extenuating or mitigating circumstances, that the minor

1 would be amenable to the care, treatment, and training program
2 available through the facilities of the juvenile court based upon an
3 evaluation of the criteria specified in subclause (I) of ~~each clause~~
4 *clauses* (i) to (v), inclusive:

5 (i) (I) The degree of criminal sophistication exhibited by the
6 minor.

7 (II) When evaluating the criterion specified in subclause (I), the
8 juvenile court may consider any relevant factor, including, but not
9 limited to, the minor's age, maturity, intellectual capacity, and
10 physical, mental, and emotional health at the time of the alleged
11 offense, the minor's impetuosity or failure to appreciate risks and
12 consequences of criminal behavior, the effect of familial, adult,
13 or peer pressure on the minor's actions, and the effect of the
14 minor's family and community environment and childhood trauma
15 on the minor's criminal sophistication.

16 (ii) (I) Whether the minor can be rehabilitated prior to the
17 expiration of the juvenile court's jurisdiction.

18 (II) When evaluating the criterion specified in subclause (I), the
19 juvenile court may consider any relevant factor, including, but not
20 limited to, the minor's potential to grow and mature.

21 (iii) (I) The minor's previous delinquent history.

22 (II) When evaluating the criterion specified in subclause (I), the
23 juvenile court may consider any relevant factor, including, but not
24 limited to, the seriousness of the minor's previous delinquent
25 history and the effect of the minor's family and community
26 environment and childhood trauma on the minor's previous
27 delinquent behavior.

28 (iv) (I) Success of previous attempts by the juvenile court to
29 rehabilitate the minor.

30 (II) When evaluating the criterion specified in subclause (I), the
31 juvenile court may consider any relevant factor, including, but not
32 limited to, the adequacy of the services previously provided to
33 address the minor's needs.

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

36 (II) When evaluating the criterion specified in subclause (I), the
37 juvenile court may consider any relevant factor, including, but not
38 limited to, the level of harm actually caused by the minor, and the
39 minor's mental and emotional development.

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

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

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

30 (1) Murder.

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

33 (3) Robbery.

34 (4) Rape with force, violence, or threat of great bodily harm.

35 (5) Sodomy by force, violence, duress, menace, or threat of
36 great bodily harm.

37 (6) A lewd or lascivious act as provided in subdivision (b) of
38 Section 288 of the Penal Code.

39 (7) Oral copulation by force, violence, duress, menace, or threat
40 of great bodily harm.

- 1 (8) An offense specified in subdivision (a) of Section 289 of
2 the Penal Code.
- 3 (9) Kidnapping for ransom.
- 4 (10) Kidnapping for purposes of robbery.
- 5 (11) Kidnapping with bodily harm.
- 6 (12) Attempted murder.
- 7 (13) Assault with a firearm or destructive device.
- 8 (14) Assault by any means of force likely to produce great bodily
9 injury.
- 10 (15) Discharge of a firearm into an inhabited or occupied
11 building.
- 12 (16) An offense described in Section 1203.09 of the Penal Code.
- 13 (17) An offense described in Section 12022.5 or 12022.53 of
14 the Penal Code.
- 15 (18) A felony offense in which the minor personally used a
16 weapon described in any provision listed in Section 16590 of the
17 Penal Code.
- 18 (19) A felony offense described in Section 136.1 or 137 of the
19 Penal Code.
- 20 (20) Manufacturing, compounding, or selling one-half ounce
21 or more of a salt or solution of a controlled substance specified in
22 subdivision (e) of Section 11055 of the Health and Safety Code.
- 23 (21) A violent felony, as defined in subdivision (c) of Section
24 667.5 of the Penal Code, which also would constitute a felony
25 violation of subdivision (b) of Section 186.22 of the Penal Code.
- 26 (22) Escape, by the use of force or violence, from a county
27 juvenile hall, home, ranch, camp, or forestry camp in violation of
28 subdivision (b) of Section 871 if great bodily injury is intentionally
29 inflicted upon an employee of the juvenile facility during the
30 commission of the escape.
- 31 (23) Torture as described in Sections 206 and 206.1 of the Penal
32 Code.
- 33 (24) Aggravated mayhem, as described in Section 205 of the
34 Penal Code.
- 35 (25) Carjacking, as described in Section 215 of the Penal Code,
36 while armed with a dangerous or deadly weapon.
- 37 (26) Kidnapping for purposes of sexual assault, as punishable
38 in subdivision (b) of Section 209 of the Penal Code.
- 39 (27) Kidnapping as punishable in Section 209.5 of the Penal
40 Code.

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

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

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

6 (c) With regard to a minor alleged to be a person described in
7 Section 602 by reason of the violation, when he or she was 14
8 years of age or older, of any of the offenses listed in subdivision
9 (b), upon motion of the petitioner made prior to the attachment of
10 jeopardy the court shall cause the probation officer to investigate
11 and submit a report on the behavioral patterns and social history
12 of the minor being considered for a determination of unfitness.
13 Following submission and consideration of the report, and of any
14 other relevant evidence that the petitioner or the minor may wish
15 to submit, the minor shall be presumed to be not a fit and proper
16 subject to be dealt with under the juvenile court law unless the
17 juvenile court concludes, based upon evidence, which evidence
18 may be of extenuating or mitigating circumstances, that the minor
19 would be amenable to the care, treatment, and training program
20 available through the facilities of the juvenile court based upon an
21 evaluation of each of the criteria specified in subparagraph (A) of
22 ~~each paragraph~~ *paragraphs* (1) to (5), inclusive:

23 (1) (A) The degree of criminal sophistication exhibited by the
24 minor.

25 (B) When evaluating the criterion specified in subparagraph
26 (A), the juvenile court may consider any relevant factor, including,
27 but not limited to, the minor's age, maturity, intellectual capacity,
28 and physical, mental, and emotional health at the time of the
29 alleged offense, the minor's impetuosity or failure to appreciate
30 risks and consequences of criminal behavior, the effect of familial,
31 adult, or peer pressure on the minor's actions, and the effect of the
32 minor's family and community environment and childhood trauma
33 on the minor's criminal sophistication.

34 (2) (A) Whether the minor can be rehabilitated prior to the
35 expiration of the juvenile court's jurisdiction.

36 (B) When evaluating the criterion specified in subparagraph
37 (A), the juvenile court may consider any relevant factor, including,
38 but not limited to, the minor's potential to grow and mature.

39 (3) (A) The minor's previous delinquent history.

1 (B) When evaluating the criterion specified in subparagraph
2 (A), the juvenile court may consider any relevant factor, including,
3 but not limited to, the seriousness of the minor's previous
4 delinquent history and the effect of the minor's family and
5 community environment and childhood trauma on the minor's
6 previous delinquent behavior.

7 (4) (A) Success of previous attempts by the juvenile court to
8 rehabilitate the minor.

9 (B) When evaluating the criterion specified in subparagraph
10 (A), the juvenile court may consider any relevant factor, including,
11 but not limited to, the adequacy of the services previously provided
12 to address the minor's needs.

13 (5) (A) The circumstances and gravity of the offenses alleged
14 in the petition to have been committed by the minor.

15 (B) When evaluating the criterion specified in subparagraph
16 (A), the juvenile court may consider any relevant factor, including,
17 but not limited to, the level of harm actually caused by the minor,
18 and the minor's mental and emotional development.

19 A determination that the minor is a fit and proper subject to be
20 dealt with under the juvenile court law shall be based on a finding
21 of amenability after consideration of the criteria set forth in
22 subparagraph (A) of ~~each paragraph~~ *paragraphs* (1) to (5),
23 inclusive, and findings therefore recited in the order as to each of
24 those criteria that the minor is fit and proper under each and every
25 one of those criteria. In making a finding of fitness, the court may
26 consider extenuating or mitigating circumstances in evaluating
27 each of those criteria. In any case in which a hearing has been
28 noticed pursuant to this section, the court shall postpone the taking
29 of a plea to the petition until the conclusion of the fitness hearing
30 and no plea which may have been entered already shall constitute
31 evidence at the hearing. If, pursuant to this subdivision, the minor
32 is found to be not a fit and proper subject for juvenile court
33 treatment and is tried in a court of criminal jurisdiction and found
34 guilty by the trier of fact, the judge may commit the minor to the
35 Department of Corrections and Rehabilitation, Division of Juvenile
36 Facilities, in lieu of sentencing the minor to the state prison, unless
37 the limitations specified in Section 1732.6 apply.

38 (d) (1) Except as provided in subdivision (b) of Section 602,
39 the district attorney or other appropriate prosecuting officer may
40 file an accusatory pleading in a court of criminal jurisdiction

1 against any minor 16 years of age or older who is accused of
2 committing an offense enumerated in subdivision (b).

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

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

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

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

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

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

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

34 (iv) The victim of the offense was 65 years of age or older, or
35 blind, deaf, quadriplegic, paraplegic, developmentally disabled,
36 or confined to a wheelchair, and that disability was known or
37 reasonably should have been known to the minor at the time of
38 the commission of the offense.

39 (3) Except as provided in subdivision (b) of Section 602, the
40 district attorney or other appropriate prosecuting officer may file

1 an accusatory pleading in a court of criminal jurisdiction against
2 any minor 16 years of age or older who is accused of committing
3 one or more of the following offenses, if the minor has previously
4 been found to be a person described in Section 602 by reason of
5 the violation of a felony offense, when he or she was 14 years of
6 age or older:

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

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

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

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

34 (5) For an offense for which the prosecutor may file the
35 accusatory pleading in a court of criminal jurisdiction pursuant to
36 this subdivision, but elects instead to file a petition in the juvenile
37 court, if the minor is subsequently found to be a person described
38 in subdivision (a) of Section 602, the minor shall be committed to
39 placement in a juvenile hall, ranch camp, forestry camp, boot camp,
40 or secure juvenile home pursuant to Section 730, or in any

1 institution operated by the Department of Corrections and
2 Rehabilitation, Division of Juvenile Facilities.

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

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