

AMENDED IN ASSEMBLY JUNE 15, 2015

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~~: *given weight*.

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~~: *given weight*.

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

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

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

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

23 (C) The person's previous delinquent history. This may include,
24 but is not limited to, ~~consideration of~~ *giving weight to* the
25 seriousness of the person's previous delinquent history and the
26 effect of the person's family and community environment and
27 childhood trauma on the person's previous delinquent behavior.

28 (D) Success of previous attempts by the juvenile court to
29 rehabilitate the person. This may include, but is not limited to,
30 *giving weight to* an analysis of the adequacy of the services
31 previously provided to address the person's needs.

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

38 If the court conducting the fitness hearing finds that the person
39 is not a fit and proper subject for juvenile court jurisdiction, then
40 the person shall be sentenced by the court where he or she was

1 convicted, in accordance with paragraph (1). If the court conducting
2 the hearing on fitness finds that the person is a fit and proper
3 subject for juvenile court jurisdiction, then the person shall be
4 subject to a disposition in accordance with subdivision (b) of
5 Section 1170.19.

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

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

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

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

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

3 707. (a) (1) In any case in which a minor is alleged to be a
4 person described in subdivision (a) of Section 602 by reason of
5 the violation, when he or she was 16 years of age or older, of any
6 criminal statute or ordinance except those listed in subdivision (b),
7 upon motion of the petitioner made prior to the attachment of
8 jeopardy the court shall cause the probation officer to investigate
9 and submit a report on the behavioral patterns and social history
10 of the minor being considered for a determination of unfitness.
11 Following submission and consideration of the report, and of any
12 other relevant evidence that the petitioner or the minor may wish
13 to submit, the juvenile court may find that the minor is not a fit
14 and proper subject to be dealt with under the juvenile court law if
15 it concludes that the minor would not be amenable to the care,
16 treatment, and training program available through the facilities of
17 the juvenile court, based upon an evaluation of the criteria specified
18 in clause (i) of subparagraphs (A) to (E), inclusive:

19 (A) (i) The degree of criminal sophistication exhibited by the
20 minor.

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

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

32 (ii) When evaluating the criterion specified in clause (i), the
33 juvenile court may ~~consider~~ *give weight to* any relevant factor,
34 including, but not limited to, the minor's potential to grow and
35 mature.

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

37 (ii) When evaluating the criterion specified in clause (i), the
38 juvenile court may ~~consider~~ *give weight to* any relevant factor,
39 including, but not limited to, the seriousness of the minor's
40 previous delinquent history and the effect of the minor's family

1 and community environment and childhood trauma on the minor's
2 previous delinquent behavior.

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

5 (ii) When evaluating the criterion specified in clause (i), the
6 juvenile court may ~~consider~~ *give weight to* any relevant factor,
7 including, but not limited to, the adequacy of the services
8 previously provided to address the minor's needs.

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

11 (ii) When evaluating the criterion specified in clause (i), the
12 juvenile court may ~~consider~~ *give weight to* any relevant factor,
13 including, but not limited to, the level of harm actually caused by
14 the minor, and the minor's mental and emotional development.

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

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

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

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

35 (B) Upon motion of the petitioner made prior to the attachment
36 of jeopardy the court shall cause the probation officer to investigate
37 and submit a report on the behavioral patterns and social history
38 of the minor being considered for a determination of unfitness.
39 Following submission and consideration of the report, and of any
40 other relevant evidence that the petitioner or the minor may wish

1 to submit, the minor shall be presumed to be not a fit and proper
2 subject to be dealt with under the juvenile court law unless the
3 juvenile court concludes, based upon evidence, which evidence
4 may be of extenuating or mitigating circumstances, that the minor
5 would be amenable to the care, treatment, and training program
6 available through the facilities of the juvenile court based upon an
7 evaluation of the criteria specified in subclause (I) of clauses (i)
8 to (v), inclusive:

9 (i) (I) The degree of criminal sophistication exhibited by the
10 minor.

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

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

22 (II) When evaluating the criterion specified in subclause (I), the
23 juvenile court may ~~consider~~ *give weight to* any relevant factor,
24 including, but not limited to, the minor's potential to grow and
25 mature.

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

27 (II) When evaluating the criterion specified in subclause (I), the
28 juvenile court may ~~consider~~ *give weight to* any relevant factor,
29 including, but not limited to, the seriousness of the minor's
30 previous delinquent history and the effect of the minor's family
31 and community environment and childhood trauma on the minor's
32 previous delinquent behavior.

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

35 (II) When evaluating the criterion specified in subclause (I), the
36 juvenile court may ~~consider~~ *give weight to* any relevant factor,
37 including, but not limited to, the adequacy of the services
38 previously provided to address the minor's needs.

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

1 (II) When evaluating the criterion specified in subclause (I), the
2 juvenile court may ~~consider~~ *give weight to* any relevant factor,
3 including, but not limited to, the level of harm actually caused by
4 the minor, and the minor's mental and emotional development.

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

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

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

33 (1) Murder.

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

36 (3) Robbery.

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

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

- 1 (6) A lewd or lascivious act as provided in subdivision (b) of
2 Section 288 of the Penal Code.
- 3 (7) Oral copulation by force, violence, duress, menace, or threat
4 of great bodily harm.
- 5 (8) An offense specified in subdivision (a) of Section 289 of
6 the Penal Code.
- 7 (9) Kidnapping for ransom.
- 8 (10) Kidnapping for purposes of robbery.
- 9 (11) Kidnapping with bodily harm.
- 10 (12) Attempted murder.
- 11 (13) Assault with a firearm or destructive device.
- 12 (14) Assault by any means of force likely to produce great bodily
13 injury.
- 14 (15) Discharge of a firearm into an inhabited or occupied
15 building.
- 16 (16) An offense described in Section 1203.09 of the Penal Code.
- 17 (17) An offense described in Section 12022.5 or 12022.53 of
18 the Penal Code.
- 19 (18) A felony offense in which the minor personally used a
20 weapon described in any provision listed in Section 16590 of the
21 Penal Code.
- 22 (19) A felony offense described in Section 136.1 or 137 of the
23 Penal Code.
- 24 (20) Manufacturing, compounding, or selling one-half ounce
25 or more of a salt or solution of a controlled substance specified in
26 subdivision (e) of Section 11055 of the Health and Safety Code.
- 27 (21) A violent felony, as defined in subdivision (c) of Section
28 667.5 of the Penal Code, which also would constitute a felony
29 violation of subdivision (b) of Section 186.22 of the Penal Code.
- 30 (22) Escape, by the use of force or violence, from a county
31 juvenile hall, home, ranch, camp, or forestry camp in violation of
32 subdivision (b) of Section 871 if great bodily injury is intentionally
33 inflicted upon an employee of the juvenile facility during the
34 commission of the escape.
- 35 (23) Torture as described in Sections 206 and 206.1 of the Penal
36 Code.
- 37 (24) Aggravated mayhem, as described in Section 205 of the
38 Penal Code.
- 39 (25) Carjacking, as described in Section 215 of the Penal Code,
40 while armed with a dangerous or deadly weapon.

1 (26) Kidnapping for purposes of sexual assault, as punishable
2 in subdivision (b) of Section 209 of the Penal Code.

3 (27) Kidnapping as punishable in Section 209.5 of the Penal
4 Code.

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

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

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

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

27 (1) (A) The degree of criminal sophistication exhibited by the
28 minor.

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

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

1 (B) When evaluating the criterion specified in subparagraph
2 (A), the juvenile court may ~~consider~~ *give weight to* any relevant
3 factor, including, but not limited to, the minor's potential to grow
4 and mature.

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

6 (B) When evaluating the criterion specified in subparagraph
7 (A), the juvenile court may ~~consider~~ *give weight to* any relevant
8 factor, including, but not limited to, the seriousness of the minor's
9 previous delinquent history and the effect of the minor's family
10 and community environment and childhood trauma on the minor's
11 previous delinquent behavior.

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

14 (B) When evaluating the criterion specified in subparagraph
15 (A), the juvenile court may ~~consider~~ *give weight to* any relevant
16 factor, including, but not limited to, the adequacy of the services
17 previously provided to address the minor's needs.

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

20 (B) When evaluating the criterion specified in subparagraph
21 (A), the juvenile court may ~~consider~~ *give weight to* any relevant
22 factor, including, but not limited to, the level of harm actually
23 caused by the minor, and the minor's mental and emotional
24 development.

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

1 and Rehabilitation, Division of Juvenile Facilities, in lieu of
2 sentencing the minor to the state prison, unless the limitations
3 specified in Section 1732.6 apply.

4 (d) (1) Except as provided in subdivision (b) of Section 602,
5 the district attorney or other appropriate prosecuting officer may
6 file an accusatory pleading in a court of criminal jurisdiction
7 against any minor 16 years of age or older who is accused of
8 committing an offense enumerated in subdivision (b).

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

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

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

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

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

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

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

1 (iv) The victim of the offense was 65 years of age or older, or
2 blind, deaf, quadriplegic, paraplegic, developmentally disabled,
3 or confined to a wheelchair, and that disability was known or
4 reasonably should have been known to the minor at the time of
5 the commission of the offense.

6 (3) Except as provided in subdivision (b) of Section 602, the
7 district attorney or other appropriate prosecuting officer may file
8 an accusatory pleading in a court of criminal jurisdiction against
9 any minor 16 years of age or older who is accused of committing
10 one or more of the following offenses, if the minor has previously
11 been found to be a person described in Section 602 by reason of
12 the violation of a felony offense, when he or she was 14 years of
13 age or older:

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

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

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

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

1 (5) For an offense for which the prosecutor may file the
2 accusatory pleading in a court of criminal jurisdiction pursuant to
3 this subdivision, but elects instead to file a petition in the juvenile
4 court, if the minor is subsequently found to be a person described
5 in subdivision (a) of Section 602, the minor shall be committed to
6 placement in a juvenile hall, ranch camp, forestry camp, boot camp,
7 or secure juvenile home pursuant to Section 730, or in any
8 institution operated by the Department of Corrections and
9 Rehabilitation, Division of Juvenile Facilities.

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

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