

AMENDED IN ASSEMBLY JULY 8, 2015  
AMENDED IN ASSEMBLY JUNE 15, 2015  
AMENDED IN SENATE MAY 19, 2015  
AMENDED IN SENATE APRIL 20, 2015

**SENATE BILL**

**No. 382**

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**Introduced by Senator Lara  
(Coauthor: Senator Leno)**

February 24, 2015

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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 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 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

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

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

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

23 (C) The person's previous delinquent history. This may include,  
24 but is not limited to, giving weight to the seriousness of the  
25 person's previous delinquent history and the effect of the person's  
26 family and community environment and childhood trauma on the  
27 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, giving weight to the actual behavior of the person, the mental  
35 state of the person, the person's degree of involvement in the crime,  
36 the level of harm actually caused by the person, and the person's  
37 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 give weight to any relevant factor, including,  
23 but not limited to, the minor's age, maturity, intellectual capacity,  
24 and physical, mental, and emotional health at the time of the  
25 alleged offense, the minor's impetuosity or failure to appreciate  
26 risks and consequences of criminal behavior, the effect of familial,  
27 adult, or peer pressure on the minor's actions, and the effect of the  
28 minor's family and community environment and childhood trauma  
29 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 give weight to any relevant factor, including,  
34 but not limited to, the minor's potential to grow and mature.

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

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

1 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 give weight to any relevant factor, including,  
7 but not limited to, the adequacy of the services previously provided  
8 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 give weight to any relevant factor, including,  
13 but not limited to, *the actual behavior of the person, the mental*  
14 *state of the person, the person's degree of involvement in the crime,*  
15 *the level of harm actually caused by the*~~minor~~*, person, and the*  
16 ~~minor's~~ *person's* mental and emotional development.

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

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

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

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

37 (B) Upon motion of the petitioner made prior to the attachment  
38 of jeopardy the court shall cause the probation officer to investigate  
39 and submit a report on the behavioral patterns and social history  
40 of the minor being considered for a determination of unfitness.

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

11 (i) (I) The degree of criminal sophistication exhibited by the  
12 minor.

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

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

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

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

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

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

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

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

3 (II) When evaluating the criterion specified in subclause (I), the  
4 juvenile court may give weight to any relevant factor, including,  
5 but not limited to, *the actual behavior of the person, the mental*  
6 *state of the person, the person's degree of involvement in the crime,*  
7 *the level of harm actually caused by the ~~minor~~, person, and the*  
8 *~~minor's~~ person's mental and emotional development.*

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

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

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

37 (1) Murder.

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

40 (3) Robbery.



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

- 1 (24) Aggravated mayhem, as described in Section 205 of the  
2 Penal Code.
- 3 (25) Carjacking, as described in Section 215 of the Penal Code,  
4 while armed with a dangerous or deadly weapon.
- 5 (26) Kidnapping for purposes of sexual assault, as punishable  
6 in subdivision (b) of Section 209 of the Penal Code.
- 7 (27) Kidnapping as punishable in Section 209.5 of the Penal  
8 Code.
- 9 (28) The offense described in subdivision (c) of Section 26100  
10 of the Penal Code.
- 11 (29) The offense described in Section 18745 of the Penal Code.
- 12 (30) Voluntary manslaughter, as described in subdivision (a)  
13 of Section 192 of the Penal Code.
- 14 (c) With regard to a minor alleged to be a person described in  
15 Section 602 by reason of the violation, when he or she was 14  
16 years of age or older, of any of the offenses listed in subdivision  
17 (b), upon motion of the petitioner made prior to the attachment of  
18 jeopardy the court shall cause the probation officer to investigate  
19 and submit a report on the behavioral patterns and social history  
20 of the minor being considered for a determination of unfitness.  
21 Following submission and consideration of the report, and of any  
22 other relevant evidence that the petitioner or the minor may wish  
23 to submit, the minor shall be presumed to be not a fit and proper  
24 subject to be dealt with under the juvenile court law unless the  
25 juvenile court concludes, based upon evidence, which evidence  
26 may be of extenuating or mitigating circumstances, that the minor  
27 would be amenable to the care, treatment, and training program  
28 available through the facilities of the juvenile court based upon an  
29 evaluation of each of the criteria specified in subparagraph (A) of  
30 paragraphs (1) to (5), inclusive:
  - 31 (1) (A) The degree of criminal sophistication exhibited by the  
32 minor.
  - 33 (B) When evaluating the criterion specified in subparagraph  
34 (A), the juvenile court may give weight to any relevant factor,  
35 including, but not limited to, the minor's age, maturity, intellectual  
36 capacity, and physical, mental, and emotional health at the time  
37 of the alleged offense, the minor's impetuosity or failure to  
38 appreciate risks and consequences of criminal behavior, the effect  
39 of familial, adult, or peer pressure on the minor's actions, and the

1 effect of the minor’s family and community environment and  
2 childhood trauma on the minor’s criminal sophistication.

3 (2) (A) Whether the minor can be rehabilitated prior to the  
4 expiration of the juvenile court’s jurisdiction.

5 (B) When evaluating the criterion specified in subparagraph  
6 (A), the juvenile court may give weight to any relevant factor,  
7 including, but not limited to, the minor’s potential to grow and  
8 mature.

9 (3) (A) The minor’s previous delinquent history.

10 (B) When evaluating the criterion specified in subparagraph  
11 (A), the juvenile court may give weight to any relevant factor,  
12 including, but not limited to, the seriousness of the minor’s  
13 previous delinquent history and the effect of the minor’s family  
14 and community environment and childhood trauma on the minor’s  
15 previous delinquent behavior.

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

18 (B) When evaluating the criterion specified in subparagraph  
19 (A), the juvenile court may give weight to any relevant factor,  
20 including, but not limited to, the adequacy of the services  
21 previously provided to address the minor’s needs.

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

24 (B) When evaluating the criterion specified in subparagraph  
25 (A), the juvenile court may give weight to any relevant factor,  
26 including, but not limited to, *the actual behavior of the person,*  
27 *the mental state of the person, the person’s degree of involvement*  
28 *in the crime,* the level of harm actually caused by the ~~minor,~~  
29 *person,* and the ~~minor’s~~ *person’s* mental and emotional  
30 development.

31 A determination that the minor is a fit and proper subject to be  
32 dealt with under the juvenile court law shall be based on a finding  
33 of amenability after consideration of the criteria set forth in  
34 subparagraph (A) of paragraphs (1) to (5), inclusive, and findings  
35 therefore recited in the order as to each of those criteria that the  
36 minor is fit and proper under each and every one of those criteria.  
37 In making a finding of fitness, the court may consider extenuating  
38 or mitigating circumstances in evaluating each of those criteria.  
39 In any case in which a hearing has been noticed pursuant to this  
40 section, the court shall postpone the taking of a plea to the petition

1 until the conclusion of the fitness hearing and no plea which may  
2 have been entered already shall constitute evidence at the hearing.  
3 If, pursuant to this subdivision, the minor is found to be not a fit  
4 and proper subject for juvenile court treatment and is tried in a  
5 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 (d) (1) Except as provided in subdivision (b) of Section 602,  
11 the district attorney or other appropriate prosecuting officer may  
12 file an accusatory pleading in a court of criminal jurisdiction  
13 against any minor 16 years of age or older who is accused of  
14 committing an offense enumerated in subdivision (b).

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

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

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

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

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

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

37 (iii) The offense was committed for the purpose of intimidating  
38 or interfering with any other person's free exercise or enjoyment  
39 of a right secured to him or her by the Constitution or laws of this  
40 state or by the Constitution or laws of the United States and because

1 of the other person’s race, color, religion, ancestry, national origin,  
2 disability, gender, or sexual orientation, or because the minor  
3 perceives that the other person has one or more of those  
4 characteristics, as described in Title 11.6 (commencing with  
5 Section 422.55) of Part 1 of the Penal Code.

6 (iv) The victim of the offense was 65 years of age or older, or  
7 blind, deaf, quadriplegic, paraplegic, developmentally disabled,  
8 or confined to a wheelchair, and that disability was known or  
9 reasonably should have been known to the minor at the time of  
10 the commission of the offense.

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

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

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

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

36 (4) In any case in which the district attorney or other appropriate  
37 prosecuting officer has filed an accusatory pleading against a minor  
38 in a court of criminal jurisdiction pursuant to this subdivision, the  
39 case shall then proceed according to the laws applicable to a  
40 criminal case. In conjunction with the preliminary hearing as

1 provided in Section 738 of the Penal Code, the magistrate shall  
2 make a finding that reasonable cause exists to believe that the  
3 minor comes within this subdivision. If reasonable cause is not  
4 established, the criminal court shall transfer the case to the juvenile  
5 court having jurisdiction over the matter.

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

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

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