

## Senate Bill No. 382

### CHAPTER 234

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.

[Approved by Governor September 1, 2015. Filed with  
Secretary of State September 1, 2015.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 382, 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.

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

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

1170.17. (a) When a person is prosecuted for a criminal offense committed while he or she was under 18 years of age and the prosecution was lawfully initiated in a court of criminal jurisdiction without a prior finding that the person is not a fit and proper subject to be dealt with under the juvenile court law, upon subsequent conviction for any criminal offense,

the person shall be subject to the same sentence as an adult convicted of the identical offense, in accordance with subdivision (a) of Section 1170.19, except under the circumstances described in subdivision (b), (c), or (d).

(b) Where the conviction is for the type of offense which, in combination with the person's age at the time the offense was committed, makes 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 prosecution for the offense could not lawfully be initiated in a court of criminal jurisdiction, then either of the following shall apply:

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

(2) Upon a motion brought by the person, the court shall order the probation department to prepare a written social study and recommendation concerning the person's fitness to be dealt with under the juvenile court law and the court shall either conduct a fitness hearing or suspend proceedings and remand the matter to the juvenile court to prepare a social study and make a determination of fitness. The person shall receive a disposition under the juvenile court law only if the person demonstrates, 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 each of the following five criteria:

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

(B) Whether the person can be rehabilitated prior to the expiration of the juvenile court's jurisdiction. This may include, but is not limited to, giving weight to the minor's potential to grow and mature.

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

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

(E) The circumstances and gravity of the offense for which the person has been convicted. This may include, but is not limited to, giving weight to the actual behavior of the person, the mental state of the person, the

person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development.

If the court conducting the fitness hearing finds that the person is not a fit and proper subject for juvenile court jurisdiction, then the person shall be sentenced by the court where he or she was convicted, in accordance with paragraph (1). If the court conducting the hearing on fitness finds that the person is a fit and proper subject for juvenile court jurisdiction, then the person shall be subject to a disposition in accordance with subdivision (b) of Section 1170.19.

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

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

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

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

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

707. (a) (1) In any case in which a minor is alleged to be a person described in subdivision (a) of Section 602 by reason of the violation, when he or she was 16 years of age or older, of any criminal statute or ordinance except those listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer

to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the juvenile court may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the criteria specified in clause (i) of subparagraphs (A) to (E), inclusive:

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

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

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

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

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

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

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

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

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

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development.

A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth in clause (i) of subparagraphs (A) to (E), inclusive, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone

the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea that may have been entered already shall constitute evidence at the hearing.

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

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

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

(B) Upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of the criteria specified in subclause (I) of clauses (i) to (v), inclusive:

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) Murder.
- (2) Arson, as provided in subdivision (a) or (b) of Section 451 of the Penal Code.
- (3) Robbery.
- (4) Rape with force, violence, or threat of great bodily harm.
- (5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.
- (6) A lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.
- (7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

- (8) An offense specified in subdivision (a) of Section 289 of the Penal Code.
  - (9) Kidnapping for ransom.
  - (10) Kidnapping for purposes of robbery.
  - (11) Kidnapping with bodily harm.
  - (12) Attempted murder.
  - (13) Assault with a firearm or destructive device.
  - (14) Assault by any means of force likely to produce great bodily injury.
  - (15) Discharge of a firearm into an inhabited or occupied building.
  - (16) An offense described in Section 1203.09 of the Penal Code.
  - (17) An offense described in Section 12022.5 or 12022.53 of the Penal Code.
  - (18) A felony offense in which the minor personally used a weapon described in any provision listed in Section 16590 of the Penal Code.
  - (19) A felony offense described in Section 136.1 or 137 of the Penal Code.
  - (20) Manufacturing, compounding, or selling one-half ounce or more of a salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.
  - (21) A violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, which also would constitute a felony violation of subdivision (b) of Section 186.22 of the Penal Code.
  - (22) Escape, by the use of force or violence, from a county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 if great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.
  - (23) Torture as described in Sections 206 and 206.1 of the Penal Code.
  - (24) Aggravated mayhem, as described in Section 205 of the Penal Code.
  - (25) Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.
  - (26) Kidnapping for purposes of sexual assault, as punishable in subdivision (b) of Section 209 of the Penal Code.
  - (27) Kidnapping as punishable in Section 209.5 of the Penal Code.
  - (28) The offense described in subdivision (c) of Section 26100 of the Penal Code.
  - (29) The offense described in Section 18745 of the Penal Code.
  - (30) Voluntary manslaughter, as described in subdivision (a) of Section 192 of the Penal Code.
- (c) With regard to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she was 14 years of age or older, of any of the offenses listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the minor shall be presumed to be not a fit and proper subject to be dealt with

under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the criteria specified in subparagraph (A) of paragraphs (1) to (5), inclusive:

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

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

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

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

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

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

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

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

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

(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may give weight to any relevant factor, including, but not limited to, the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development.

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

court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may have been entered already shall constitute evidence at the hearing. If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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