

**Senate Bill No. 1195**

\_\_\_\_\_

Passed the Senate      September 12, 1997

\_\_\_\_\_  
*Secretary of the Senate*

\_\_\_\_\_

Passed the Assembly      September 10, 1997

\_\_\_\_\_  
*Chief Clerk of the Assembly*

\_\_\_\_\_

This bill was received by the Governor this \_\_\_\_ day  
of \_\_\_\_\_, 1997, at \_\_\_\_ o'clock \_\_M.

\_\_\_\_\_  
*Private Secretary of the Governor*



## CHAPTER \_\_\_\_

An act to amend Sections 656.2 and 707 of the Welfare and Institutions Code, relating to minors.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1195, Schiff. Minors: hearings.

(1) Existing law requires the probation officer, in any case in which a minor is alleged to have committed an act that would have been a felony if committed by an adult, to obtain a statement from the victim or specified persons and to include it in his or her report to the court for the disposition hearing. The probation officer is required to advise the victim or those persons as to the time and place of the disposition hearing. The victim or those persons may attend the disposition hearing and express their views.

This bill would require the probation officer to inform the victim, as defined, of the right to submit a victim impact statement and to include that statement in the officer's report for the disposition hearing and any fitness hearing. The bill would authorize the victim to attend fitness hearings. The bill would require the arresting agency and the district attorney to provide the victim with specified information and notice regarding the victim's rights to attend certain hearings and to obtain copies of court materials, subject to limitations relating to disclosure of those materials to unauthorized persons, as specified, in cases where minors have committed an act subject to a fitness hearing. The bill would make it a misdemeanor, punishable by a fine of up to \$500, to unlawfully disseminate materials provided by the court pursuant to this provision.

(2) Existing law requires the probation officer to investigate and submit a report on the behavioral patterns and social history of a minor being considered for a determination of unfitness.

This bill would require the probation officer to include in his or her report any written statement submitted by



a victim and would require the court to consider the statement to the extent relevant to the determination of fitness.

(3) This bill would impose a state-mandated local program by creating a new crime and imposing new or increased duties on probation officers and district attorneys.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

SECTION 1. Section 656.2 of the Welfare and Institutions Code is amended to read:

656.2. (a) In any case in which a minor is alleged to have committed an act that would have been a felony if committed by an adult, the probation officer shall inform the victim of the rights of victims to submit a victim impact statement. If the victim exercises the right to submit a victim impact statement to the probation officer, the probation officer shall include the statement in his or her social study submitted to the court pursuant to Section 706 and, if applicable, in his or her report submitted to the court pursuant to Section 707. The probation officer also shall advise those persons as to the time and place of the disposition hearing to be conducted



pursuant to Sections 702 and 706 and any fitness hearing to be conducted pursuant to Section 707.

The probation officer shall also provide the victim with information concerning the victim's right to an action for civil damages against the minor and his or her parents and the victim's opportunity to be compensated from the restitution fund. The information shall be in the form of written material prepared by the Judicial Council and shall be provided to each victim for whom the probation officer has a current mailing address.

(b) Notwithstanding any other provision of law, the persons from whom the probation officer is required to solicit a statement pursuant to subdivision (a) shall have the right to attend the disposition hearing conducted pursuant to Section 702 and to express their views concerning the offense and disposition of the case pursuant to Section 706 and to attend any fitness hearing conducted pursuant to Section 707.

(c) Notwithstanding any other provision of law, in any case in which a minor is alleged to have committed an act subject to a fitness hearing under Section 707, the victim shall have the right to be informed of all court dates and continuances pertaining to the case, and shall further have the right to obtain copies of the charging petition, the minutes of the proceedings, and orders of adjudications and disposition of the court that are contained in the court file. The arresting agency shall notify the victim in a timely manner of the address and telephone number of the juvenile branch of the district attorney's office that will be responsible for the case and for informing the victim of the victim's right to attend hearings and obtain documents as provided in this section. The district attorney shall, upon request, inform the victim of the date of the fitness hearing, the date of the disposition hearing, and the dates for any continuances of those hearings, and shall inform the court if the victim seeks to exercise his or her right to obtain copies of the documents described in this subdivision.

Where the proceeding against the minor is based on a felony that is not listed in Section 676, a victim who



obtains information about the minor under this subdivision shall not disclose or disseminate this information beyond his or her immediate family unless authorized to do so by a judge of the juvenile court, and the judge may suspend or terminate the right of the victim to access to information under this subdivision if the information is improperly disclosed or disseminated by the victim or any members of his or her immediate family. The intentional dissemination of documents in violation of this subdivision is a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500). Documents released by the court to a victim pursuant to this section shall be stamped as confidential and with a statement that the unlawful dissemination of the documents is a misdemeanor punishable by a fine of not more than five hundred dollars (\$500).

(d) Upon application of the district attorney for good cause and a showing of potential danger to the public, the court may redact any information contained in any documents released by the court to a victim pursuant to this section.

(e) For purposes of this section, “victim” means the victim, the parent or guardian of the victim if the victim is a minor, or, if the victim has died, the victim’s next of kin.

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

707. (a) In any case in which a minor is alleged to be a person described in 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 which 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 following criteria:

- (1) The degree of criminal sophistication exhibited by the minor.
- (2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.
- (3) The minor's previous delinquent history.
- (4) Success of previous attempts by the juvenile court to rehabilitate the minor.
- (5) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

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 above, 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 which may already have been entered shall constitute evidence at the hearing.

(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, when he or she was 16 years of age or older, 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 while armed with a dangerous or deadly weapon.
- (4) Rape with force or violence or threat of great bodily harm.
- (5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.
- (6) 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) Any offense specified in subdivision (a) of Section 289 of the Penal Code.

(9) Kidnapping for ransom.

(10) Kidnapping for purpose 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) Any offense described in Section 1203.09 of the Penal Code.

(17) Any offense described in Section 12022.5 of the Penal Code.

(18) Any felony offense in which the minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code.

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

(20) Manufacturing, compounding, or selling one-half ounce or more of any salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.

(21) Any violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, which would also 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 any county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 where 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, as punishable in subdivision (d) of Section 208 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 12034 of the Penal Code.

(29) The offense described in Section 12308 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 16 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 which 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 following criteria:

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

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

(3) The minor's previous delinquent history.

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

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



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 above, and findings therefor recited in the order as to each of the above criteria that the minor is fit and proper under each and every one of the above criteria. In making a finding of fitness, the court may consider extenuating or mitigating circumstances in evaluating each of the above 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 already have been entered shall constitute evidence at the hearing.

(d) (1) In any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she had attained the age of 14 years but had not attained the age of 16 years, of any of the offenses set forth in paragraph (2), 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 following criteria:

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

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

(C) The minor's previous delinquent history.

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



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

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 above, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this subdivision, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea that may already have been entered shall constitute evidence at the hearing.

(2) Paragraph (1) 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, when he or she had attained the age of 14 years but had not attained the age of 16 years, of one of the following offenses:

(A) Murder.

(B) Robbery in which the minor personally used a firearm.

(C) Rape with force or violence or threat of great bodily harm.

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

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

(F) The offense specified in subdivision (a) of Section 289 of the Penal Code.

(G) Kidnapping for ransom.

(H) Kidnapping for purpose of robbery.

(I) Kidnapping with bodily harm.

(J) Kidnapping, as punishable in subdivision (d) of Section 208 of the Penal Code.

(K) The offense described in subdivision (c) of Section 12034 of the Penal Code, in which the minor personally used a firearm.

(L) Personally discharging a firearm into an inhabited or occupied building.

(M) Manufacturing, compounding, or selling one-half ounce or more of any salt or solution of a controlled



substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.

(N) Escape, by the use of force or violence, from any county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.

(O) Torture, as described in Section 206 of the Penal Code.

(P) Aggravated mayhem, as described in Section 205 of the Penal Code.

(Q) Assault with a firearm in which the minor personally used the firearm.

(R) Attempted murder.

(S) Rape in which the minor personally used a firearm.

(T) Burglary in which the minor personally used a firearm.

(U) Kidnapping in which the minor personally used a firearm.

(V) The offense described in Section 12308 of the Penal Code.

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

(X) Carjacking, in which the minor personally used a firearm.

(e) This subdivision shall apply to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she had attained the age of 14 years but had not attained the age of 16 years, of the offense of murder in which it is alleged in the petition that one of the following exists:

(1) In the case of murder in the first or second degree, the minor personally killed the victim.

(2) In the case of murder in the first or second degree, the minor, acting with the intent to kill the victim, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted any person to kill the victim.

(3) In the case of murder in the first degree, while not the actual killer, the minor, acting with reckless



indifference to human life and as a major participant in a felony enumerated in paragraph (17) of subdivision (a) of Section 190.2, or an attempt to commit that felony, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted in the commission or attempted commission of that felony and the commission or attempted commission of that felony or the immediate flight therefrom resulted in the death of the victim.

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 which 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 following criteria:

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

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

(C) The minor's previous delinquent history.

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

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

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 above, and findings therefor recited in the order as to each of the above criteria that the minor is fit and proper under each and every one of



the above criteria. In making a finding of fitness, the court may consider extenuating or mitigating circumstances in evaluating each of the above 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 already have been entered shall constitute evidence at the hearing.

(f) Any 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.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act



shall become operative on the same date that the act takes effect pursuant to the California Constitution.



Approved \_\_\_\_\_, 1997

\_\_\_\_\_  
*Governor*

