

AMENDED IN ASSEMBLY APRIL 20, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 743

Introduced by Assembly Member Strickland

February 17, 2005

An act to amend Section ~~602~~ 707 of the Welfare and Institutions Code, relating to minors.

LEGISLATIVE COUNSEL'S DIGEST

AB 743, as amended, Strickland. Minors: rape.

Proposition 21, an initiative statute, enumerates specified crimes for which a minor 14 years of age or older ~~shall~~ *may* be prosecuted under the general law in a court of criminal jurisdiction, *as specified*. Proposition 21 allows those provisions to be amended by the Legislature by a $\frac{2}{3}$ vote of the membership of each house.

This bill would add ~~specified acts of~~ rape of an unconscious person to those enumerated crimes.

Vote: $\frac{2}{3}$. 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 602 of the Welfare and Institutions~~
2 ~~Code is amended to read:~~
3 *SECTION 1. Section 707 of the Welfare and Institutions Code*
4 *is amended to read:*
5 707. (a) (1) In any case in which a minor is alleged to be a
6 person described in Section 602 (a) by reason of the violation,
7 when he or she was 16 years of age or older, of any criminal
8 statute or ordinance except those listed in subdivision (b), upon

1 motion of the petitioner made prior to the attachment of jeopardy
2 the court shall cause the probation officer to investigate and
3 submit a report on the behavioral patterns and social history of
4 the minor being considered for a determination of unfitness.
5 Following submission and consideration of the report, and of any
6 other relevant evidence which the petitioner or the minor may
7 wish to submit, the juvenile court may find that the minor is not
8 a fit and proper subject to be dealt with under the juvenile court
9 law if it concludes that the minor would not be amenable to the
10 care, treatment, and training program available through the
11 facilities of the juvenile court, based upon an evaluation of the
12 following criteria:

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

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

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

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

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

22 A determination that the minor is not a fit and proper subject to
23 be dealt with under the juvenile court law may be based on any
24 one or a combination of the factors set forth above, which shall
25 be recited in the order of unfitness. In any case in which a
26 hearing has been noticed pursuant to this section, the court shall
27 postpone the taking of a plea to the petition until the conclusion
28 of the fitness hearing, and no plea which may already have been
29 entered shall constitute evidence at the hearing.

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

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

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

1 Upon motion of the petitioner made prior to the attachment of
2 jeopardy the court shall cause the probation officer to investigate
3 and submit a report on the behavioral patterns and social history
4 of the minor being considered for a determination of unfitness.
5 Following submission and consideration of the report, and of any
6 other relevant evidence that the petitioner or the minor may wish
7 to submit, the minor shall be presumed to be not a fit and proper
8 subject to be dealt with under the juvenile court law unless the
9 juvenile court concludes, based upon evidence, which evidence
10 may be of extenuating or mitigating circumstances that the minor
11 would be amenable to the care, treatment, and training program
12 available through the facilities of the juvenile court, based upon
13 an evaluation of the following criteria:

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

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

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

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

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

23 A determination that the minor is a fit and proper subject to be
24 dealt with under the juvenile court law shall be based on a
25 finding of amenability after consideration of the criteria set forth
26 above, and findings therefor recited in the order as to each of the
27 above criteria that the minor is fit and proper under each and
28 every one of the above criteria. In making a finding of fitness, the
29 court may consider extenuating and mitigating circumstances in
30 evaluating each of the above criteria. In any case in which the
31 hearing has been noticed pursuant to this section, the court shall
32 postpone the taking of a plea to the petition until the conclusion
33 of the fitness hearing and no plea which may already have been
34 entered shall constitute evidence at the hearing. If the minor is
35 found to be a fit and proper subject to be dealt with under the
36 juvenile court law pursuant to this subdivision, the minor shall be
37 committed to placement in a juvenile hall, ranch camp, forestry
38 camp, boot camp, or secure juvenile home pursuant to Section
39 730, or in any institution operated by the Youth Authority.

1 (3) If, pursuant to this subdivision, the minor is found to be not
2 a fit and proper subject for juvenile court treatment and is tried in
3 a court of criminal jurisdiction and found guilty by the trier of
4 fact, the judge may commit the minor to the Youth Authority in
5 lieu of sentencing the minor to the state prison, unless the
6 limitations specified in Section 1732.6 apply.

7 (b) Subdivision (c) shall be applicable in any case in which a
8 minor is alleged to be a person described in Section 602 by
9 reason of the violation, when he or she was 16 years of age or
10 older, of one of the following offenses:

11 (1) Murder.

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

14 (3) Robbery.

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

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

18 (6) Lewd or lascivious act as provided in subdivision (b) of
19 Section 288 of the Penal Code.

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

22 (8) Any offense specified in subdivision (a) of Section 289 of
23 the Penal Code.

24 (9) Kidnaping for ransom.

25 (10) Kidnaping for purpose of robbery.

26 (11) Kidnaping with bodily harm.

27 (12) Attempted murder.

28 (13) Assault with a firearm or destructive device.

29 (14) Assault by any means of force likely to produce great
30 bodily injury.

31 (15) Discharge of a firearm into an inhabited or occupied
32 building.

33 (16) Any offense described in Section 1203.09 of the Penal
34 Code.

35 (17) Any offense described in Section 12022.5 or 12022.53 of
36 the Penal Code.

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

- 1 (19) Any felony offense described in Section 136.1 or 137 of
2 the Penal Code.
- 3 (20) Manufacturing, compounding, or selling one-half ounce
4 or more of any salt or solution of a controlled substance specified
5 in subdivision (e) of Section 11055 of the Health and Safety
6 Code.
- 7 (21) Any violent felony, as defined in subdivision (c) of
8 Section 667.5 of the Penal Code, which would also constitute a
9 felony violation of subdivision (b) of Section 186.22 of the Penal
10 Code.
- 11 (22) Escape, by the use of force or violence, from any county
12 juvenile hall, home, ranch, camp, or forestry camp in violation of
13 subdivision (b) of Section 871 where great bodily injury is
14 intentionally inflicted upon an employee of the juvenile facility
15 during the commission of the escape.
- 16 (23) Torture as described in Sections 206 and 206.1 of the
17 Penal Code.
- 18 (24) Aggravated mayhem, as described in Section 205 of the
19 Penal Code.
- 20 (25) Carjacking, as described in Section 215 of the Penal
21 Code, while armed with a dangerous or deadly weapon.
- 22 (26) Kidnaping, as punishable in subdivision (d) of Section
23 208 of the Penal Code.
- 24 (27) Kidnaping, as punishable in Section 209.5 of the Penal
25 Code.
- 26 (28) The offense described in subdivision (c) of Section 12034
27 of the Penal Code.
- 28 (29) The offense described in Section 12308 of the Penal
29 Code.
- 30 (30) Voluntary manslaughter, as described in subdivision (a)
31 of Section 192 of the Penal Code.
- 32 (31) *Rape of an unconscious person.*
- 33 (c) With regard to a minor alleged to be a person described in
34 Section 602 by reason of the violation, when he or she was 14
35 years of age or older, of any of the offenses listed in subdivision
36 (b), upon motion of the petitioner made prior to the attachment of
37 jeopardy the court shall cause the probation officer to investigate
38 and submit a report on the behavioral patterns and social history
39 of the minor being considered for a determination of unfitness.
40 Following submission and consideration of the report, and of any

1 other relevant evidence which the petitioner or the minor may
2 wish to submit the minor shall be presumed to be not a fit and
3 proper subject to be dealt with under the juvenile court law
4 unless the juvenile court concludes, based upon evidence, which
5 evidence may be of extenuating or mitigating circumstances, that
6 the minor would be amenable to the care, treatment, and training
7 program available through the facilities of the juvenile court
8 based upon an evaluation of each of the following criteria:

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (iii) The offense was committed for the purpose of
24 intimidating or interfering with any other person's free exercise
25 or enjoyment of any right secured to him or her by the
26 Constitution or laws of this state or by the Constitution or laws of
27 the United States and because of the other person's race, color,
28 religion, ancestry, national origin, disability, gender, or sexual
29 orientation, or because the minor perceives that the other person
30 has one or more of those characteristics, as described in Title
31 11.6 (commencing with Section 422.6) of Part 1 of the Penal
32 Code.

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

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

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

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

12 (B) Any felony offense committed for the purposes of
13 intimidating or interfering with any other person's free exercise
14 or enjoyment of any right secured to him or her by the
15 Constitution or laws of this state or by the Constitution or laws of
16 the United States and because of the other person's race, color,
17 religion, ancestry, national origin, disability, gender, or sexual
18 orientation, or because the minor perceived that the other person
19 had one or more of those characteristics, as described in Title
20 11.6 (commencing with Section 422.6) of Part 1 of the Penal
21 Code; or

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

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

36 (5) For any offense for which the prosecutor may file the
37 accusatory pleading in a court of criminal jurisdiction pursuant to
38 this subdivision, but elects instead to file a petition in the juvenile
39 court, if the minor is subsequently found to be a person described
40 in subdivision (a) of Section 602, the minor shall be committed

1 to placement in a juvenile hall, ranch camp, forestry camp, boot
2 camp, or secure juvenile home pursuant to Section 730, or in any
3 institution operated by the Youth Authority.

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

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

19 ~~602. (a) Except as provided in subdivision (b), any person
20 who is under the age of 18 years when he or she violates any law
21 of this state or of the United States or any ordinance of any city
22 or county of this state defining crime other than an ordinance
23 establishing a curfew based solely on age, is within the
24 jurisdiction of the juvenile court, which may adjudge such person
25 to be a ward of the court.~~

26 ~~(b) Any person who is alleged, when he or she was 14 years of
27 age or older, to have committed one of the following offenses
28 shall be prosecuted under the general law in a court of criminal
29 jurisdiction:~~

30 ~~(1) Murder, as described in Section 187 of the Penal Code, if
31 one of the circumstances enumerated in subdivision (a) of
32 Section 190.2 of the Penal Code is alleged by the prosecutor, and
33 the prosecutor alleges that the minor personally killed the victim.~~

34 ~~(2) The following sex offenses, if the prosecutor alleges that
35 the minor personally committed the offense, and if the prosecutor
36 alleges one of the circumstances enumerated in the One Strike
37 law, subdivision (d) or (e) of Section 667.61 of the Penal Code,
38 applies:~~

39 ~~(A) Rape, as described in paragraph (2), (3), or (4) of
40 subdivision (a) of Section 261 of the Penal Code.~~

1 ~~(B) Spousal rape, as described in paragraph (1) of subdivision~~
2 ~~(a) of Section 262 of the Penal Code.~~

3 ~~(C) Forceful sex offenses in concert with another, as described~~
4 ~~in Section 264.1 of the Penal Code.~~

5 ~~(D) Forceful lewd and lascivious acts on a child under the age~~
6 ~~of 14 years, as described in subdivision (b) of Section 288 of the~~
7 ~~Penal Code.~~

8 ~~(E) Forceful sexual penetration, as described in subdivision (a)~~
9 ~~of Section 289 of the Penal Code.~~

10 ~~(F) Sodomy or oral copulation in violation of Section 286 or~~
11 ~~288a of the Penal Code, by force, violence, duress, menace, or~~
12 ~~fear of immediate and unlawful bodily injury on the victim or~~
13 ~~another person.~~

14 ~~(G) Lewd and lascivious acts on a child under the age of 14~~
15 ~~years, as defined in subdivision (a) of Section 288, unless the~~
16 ~~defendant qualifies for probation under subdivision (c) of Section~~
17 ~~1203.066 of the Penal Code.~~

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20 **CORRECTIONS:**

21 **Digest-Page 1.**

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