

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

O.G.,

Petitioner,

vs.

THE SUPERIOR COURT OF VENTURA COUNTY,

Respondent;

THE PEOPLE OF THE STATE OF CALIFORNIA,

Real Party in Interest.

COURT NO. S259011

Court of Appeal
No. B295555

Ventura County
Superior Court
No. 2018017144

Hon. Kevin J. McGee, Judge of the Superior Court

**REAL PARTY IN INTEREST'S REQUEST FOR JUDICIAL NOTICE;
DECLARATION OF MICHELLE CONTOIS**

GREGORY D. TOTTEN
District Attorney
MICHELLE J. CONTOIS, SB #174208
Deputy District Attorney
800 South Victoria Avenue
Ventura, CA 93009

Telephone (805) 654-3078

Attorney for Real Party in Interest

REQUEST FOR JUDICIAL NOTICE

Pursuant to California Rule of Court 8.252 and California Evidence Code section 452, real party in interest, the People of the State of California, respectfully requests this court take judicial notice of the December 22, 2015, submission of *The Justice and Rehabilitation Act* to the Attorney General of California pursuant to Elections Code section 9001, subdivision (a), attached as exhibit 1 to the declaration of Michelle Contois. Although it is not clear that taking judicial notice is necessary in order for this Court to consider the language of the December 22, 2015, submission of “The Justice and Rehabilitation Act” to the Attorney General of California (see *Brown v. Superior Court* (2016) 63 Cal.4th 335, 340), we seek such notice out of an abundance of caution.

Exhibit 1 is a copy of the precursor proposal to Proposition 57 that was filed with the Attorney General of California and posted on the Attorney General’s official website pursuant to Evidence Code section 9002. It is therefore the proper subject of judicial notice under Evidence Code section 452, subdivision (c). The contents of exhibit 1 are “not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” Exhibit 1 is thus the proper subject of judicial notice under Evidence Code section 452, subdivision (h). (See *California Public Records Research, Inc. v. County of Yolo* (2016) 4 Cal.App.5th 150, 176, fn. 12 [granting unopposed request for judicial notice of prior versions of applicable statutes and associated legislative history]; *People v Superior Court (Ferguson)* (2005) 132

CA4th 1525, 1532 [“Also appropriate for judicial notice are prior versions of a bill as well as analyses of such earlier versions, which shed light on how the Legislature arrived at the ultimately enacted statute].)

Exhibit 1 is relevant to the legal dispute concerning voter intent at the center of this case. This court had exhibit 1 before it when it considered the issues presented in *Brown v. Superior Court, supra*, 63 Cal.4th at p. 340, and referenced its contents in the published opinion. The contents of exhibit 1 have been raised directly in arguments by amici Amicus Populi and the California District Attorneys Association. (See Amicus Brief of Amicus Populi at pp. 27, 33, 38; Amicus Brief of California District Attorneys Association at p. 44, fn 4.) Amicus Populi disagreed with the conclusion of Court of Appeal in *People v. Superior Court (K.L.)* (2019) 36 Cal.App.5th 529, 536, fn. 4, that the exhibit 1 “suggests that S.B. 1391 furthers that intent to have more juveniles fall within juvenile jurisdiction.” (See Amicus Brief of Amicus Populi at p. 38; See also *People v. Superior Court (Alexander C.)* (2019) 34 Cal.App.5th 994, 1002–1003 [exhibit 1 means permitting transfer of 14 and 15 year old offenders not a purpose of Proposition 57].)

For the above reasons, real party in interest respectfully requests this court take judicial notice of exhibit 1 to the Declaration of Michelle Contois.

Respectfully submitted,

GREGORY D. TOTTEN, District Attorney
County of Ventura, State of California

Dated: May 15, 2020

By:



MICHELLE J. CONTOIS
Deputy District Attorney

DECLARATION OF MICHELLE CONTOIS

I, Michelle J. Contois, Deputy District Attorney, counsel for Real Party in Interest, declare as follows:

I am an attorney at law in good standing, duly licensed to practice before the courts of the State of California (SBN 174208), and a Deputy District Attorney assigned to the Writs, Appeals, and Training Unit of the Ventura County District Attorney's Office. I am the attorney assigned to prepare real party in interest's briefs in *O.G. v. Superior Court*, case number S259011.

Attached as exhibit 1 is a true and correct copy of the December 22, 2015, submission of *The Justice and Rehabilitation Act* to the Attorney General of California pursuant to Elections Code section 9001, subdivision (a).

A copy of exhibit 1 was considered by this court in *Brown v. Superior Court* (2016) 63 Cal.4th 335, 340, and the court referenced its contents in the published opinion. Specifically, the document was lodged in this court by petitioners Governor Edmund g. Brown, Jr, Margaret R. Prinzing, and Harry Berezin, in S232642 in petitioners Appendix, [Vol. I of II] to Emergency Petition for Writ of Mandate and Request for Immediate stay and/or Other Appropriate Relief. Volume I of that Appendix is available at [https://www.courts.ca.gov/documents/2-s232642-appendix-\(vol-1-of-2\)-022516.pdf](https://www.courts.ca.gov/documents/2-s232642-appendix-(vol-1-of-2)-022516.pdf). The copy of exhibit 1 begins at page APP014, and another copy appears at APP095 as an exhibit to a request for judicial notice.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge, information and belief and that this declaration is executed in Ventura, California, on October 8, 2020.



MICHELLE J. CONTOIS
Deputy District Attorney

EXHIBIT 1

REMCHO, JOHANSEN & PURCELL, LLP
ATTORNEYS AT LAW

15 - 0121

201 DOLORES AVENUE
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Andrew Harris Werbrock
Harry A. Berezin
Juan Carlos Ibarra
Joseph Remcho (1944-2003)
Kathleen J. Purcell (Ret.)

SACRAMENTO PHONE: (916) 264-1818

December 21, 2015

VIA MESSENGER

Office of the Attorney General
1300 "I" Street, 17th Floor
Sacramento, CA 95814

Attention: Ashley Johansson, Initiative Coordinator

Re: *The Justice and Rehabilitation Act*

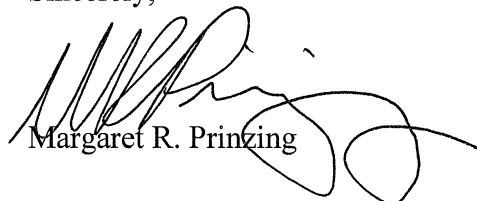
Dear Ms. Johansson:

In accordance with the requirements of Elections Code section 9001(a), I request that the Attorney General prepare a circulating title and summary of the chief purpose and points of the initiative measure entitled the "The Justice and Rehabilitation Act." The text of the measure, a check for \$200.00, and the certifications required by Elections Code sections 9001 and 9608 are enclosed.

Please direct all correspondence and inquiries regarding this measure to:

Smart on Crime
c/o James C. Harrison
Margaret R. Prinzing
Harry A. Berezin
Remcho, Johansen & Purcell, LLP
201 Dolores Avenue
San Leandro, CA 94577
Phone: (510) 346-6200
Fax: (510) 346-6201

Sincerely,


Margaret R. Prinzing

Enclosure

RECEIVED
DEC 22 2015

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

REMCHO, JOHANSEN & PURCELL, LLP
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Sincerely,



Harry A. Berezin

Enclosure

THE JUSTICE AND REHABILITATION ACT

SECTION 1. Title.

This measure shall be known and may be cited as “The Justice and Rehabilitation Act.”

SEC. 2. Findings and Declarations.

The people of the State of California find and declare:

1. The People enact the Justice and Rehabilitation Act to ensure that California’s juvenile and criminal justice systems effectively stop repeat offending and improve public safety.
2. Evidence shows that young people sent into the adult criminal justice system are more likely to keep committing crimes compared to young people who are rehabilitated in the juvenile justice system.
3. Evidence shows that rehabilitating youthful offenders, instead of warehousing them, improves public safety and reduces recidivism.
4. Evidence shows that authorizing judges and parole boards to consider release of individuals that have become rehabilitated reduces waste and incentivizes rehabilitation.
5. This measure will reduce costs – and make us safer at the same time. It reduces extreme sentences that fail to rehabilitate and focuses on rehabilitating youth and young adult offenders so they can go on to become law-abiding and productive members of our communities.
6. This Act ensures that people who are dangerous to the public remain incarcerated and that sentences for people convicted of murder or rape are not changed.

SEC. 3. Purpose and Intent.

In enacting this Act, it is the purpose and intent of the people of the State of California to:

1. Ensure that California’s juvenile and criminal justice system resources are used wisely to rehabilitate and protect public safety.
2. Require judges to sentence youth offenders to the facilities or programs that will rehabilitate them, instead of make them more likely to commit crimes.
3. Require juvenile court rehabilitation sentences for youth offenders under 16.
4. Authorize parole consideration for individuals who were under 23 at the time of their conviction and have been rehabilitated, to incentivize rehabilitation and reduce prison waste.
5. Authorize the sealing of criminal records for convictions before age 21 if the person has been rehabilitated, except for murder or rape convictions.

6. Reduce costs and waste in the justice system by prioritizing rehabilitation and reducing recidivism.

SEC. 4. Judicial Transfer Process.

Sections 602, 707, and 731 of the Welfare and Institutions Code are hereby amended.

Section 602 of the Welfare and Institutions Code is amended to read:

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

(b) Any person who is alleged, when he or she was ~~14~~ 16 years of age or older, to have committed one of the following offenses ~~shall~~ may be prosecuted under the general law in a court of criminal jurisdiction if the juvenile court orders the minor transferred for adult criminal prosecution after a transfer hearing described in Section 707:

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

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

(A) Rape, as described in paragraph (2) of subdivision (a) of Section 261 of the Penal Code.

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

(C) Forcible sex offenses in concert with another, as described in Section 264.1 of the Penal Code.

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

(E) Forcible sexual penetration, as described in subdivision (a) of Section 289 of the Penal Code.

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

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

(3) Kidnapping for ransom or purposes of robbery or sexual assault, with bodily harm, or in order to facilitate the commission of a carjacking, as described in Section 209.5 of the Penal Code, if the prosecutor alleges that the minor personally committed the offense.

(4) Torture, as described in Section 206 of the Penal Code, if the prosecutor alleges that the minor personally committed the offense.

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

707. (a)(1) In any case in which a minor person is alleged to be a person described in subdivision (a) of Section 602 by reason of the violation, have committed one of the offenses listed in Section 602(b) when he or she was 16 or 17 years of age or older, of any criminal statute or ordinance except those listed in subdivision (b), the District Attorney may make a motion to transfer the minor from juvenile court to a court of criminal jurisdiction to be prosecuted under the general law. upon The motion of the petitioner must be made prior to the attachment of jeopardy. Upon such motion, the juvenile court shall cause order the probation officer department to investigate and submit a report on the behavioral patterns and social minor's history, the minor and family's strengths and needs, and community support that promotes youth development. of the minor being considered for a determination of unfitness. The report shall include any written or oral statement offered by the victim pursuant to subdivision (b) of Section 656.2 of the Penal Code. 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:

(b)(1) Prior to the transfer hearing and upon motion of the minor, the court shall make a determination whether there is sufficient probable cause that the minor committed the offenses alleged in the transfer motion. The determination may, consistent with subdivision (b) of Section 872 of the Penal Code, be based in whole or in part upon on the sworn testimony of a law enforcement officer and evidence or witnesses offered by the parties. The parties have the right to present and cross examine witnesses.

(2) If the court finds that probable cause has not been established for offenses and enhancements alleged in the transfer motion it shall dismiss the transfer motion and set the matter for a pre-plea hearing. If the court finds that probable cause has been established, it shall set the matter for a transfer hearing to determine whether the minor should be transferred from the juvenile court to a court of criminal jurisdiction.

(c)(1) At the hearing the court shall consider any relevant evidence that the petitioner or the minor may wish to submit and the report submitted by the probation department.

(2) Any victims' statements in the probation report shall be considered by the court to the extent they are relevant to the court's determination of transfer.

(3) The court shall consider and give great weight to the fundamental developmental differences between young people and fully matured adults; the diminished culpability of young people; and

the fact that young people continue to mature well into adulthood and have the capacity to mature and grow with proper rehabilitative services.

(4) In addition to considering the factors set forth in paragraphs (1) through (3) of subdivision (c) above, the juvenile court's evaluation of whether the minor should be transferred to a court of criminal jurisdiction shall include consideration of the following criteria:

(A)(i) The degree of criminal sophistication exhibited by the minor. Whether juvenile court jurisdiction would be more likely to result in the minor's rehabilitation. The juvenile court shall consider any relevant factor, including but not limited to the amenability of the minor to the care and treatment of juvenile court, the impact juvenile court and community resources could have on the minor, and the minor's potential to grow and change.

~~(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)(B) The minor's previous delinquent history.~~

~~(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to shall consider any relevant factor, including, but not limited to, the seriousness of the minor's previous delinquent juvenile court history and the effect of the minor's family and community environment, and childhood any exposure to 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, and the adequacy and appropriateness of the services previously provided to address the minor's needs.~~

~~(E)(i)(C) 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 shall consider the circumstances of this incident and consider any relevant factor, including but not limited to, the actual behavior of the person minor, the mental state of the person minor, the person's minor's degree of involvement in the crime, and the level of harm actually personally caused by the person minor, and the person's mental and emotional development.~~

(D) The minor's mental and emotional development and maturity.

The juvenile court shall consider any relevant factor, including but not limited to, the minor's age, maturity, intellectual capacity, 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 behavior.

~~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 in clause (i) of subparagraphs (A) to (E), inclusive, which shall be recited in the order of unfitness.~~

(d) Juvenile court shall be presumed to be the appropriate jurisdiction for a person who was under the age of 18 at the time he or she is alleged to have committed the offense subject to transfer. If the court finds by clear and convincing evidence that the totality of the circumstances demonstrates that the minor would not be better served by the care and treatment available through juvenile court, the court shall order the minor transferred from the juvenile court to a court of criminal jurisdiction. If the court orders transfer, the court shall recite the basis for its decision and set forth the reasons in an order entered upon the minutes.

(e) 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 the 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 following 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.~~

Section 731 of the Welfare and Institutions Code is amended to read:

731. (a) If a minor is adjudged a ward of the court on the ground that he or she is a person described by Section 602, the court may order any of the types of treatment referred to in Sections 727 and 730 and, in addition, may do any of the following:

(1) Order the ward to make restitution, to pay a fine up to two hundred fifty dollars (\$250) for deposit in the county treasury if the court finds that the minor has the financial ability to pay the fine, or to participate in uncompensated work programs.

(2) Commit the ward to a sheltered-care facility.

(3) Order that the ward and his or her family or guardian participate in a program of professional counseling as arranged and directed by the probation officer as a condition of continued custody of the ward.

(4) Commit the ward to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, if the ward has committed an offense described ~~in subdivision (b) of Section 707 below~~ or in subdivision (c) of Section 290.008 of the Penal Code, and is not otherwise ineligible for commitment to the division under Section 733.

(A) Murder.

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

(C) Robbery while armed with a dangerous or deadly weapon.

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

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

(F) A lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.

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

(H) An offense specified in subdivision (a) of Section 289 of the Penal Code.

(I) Kidnapping for ransom.

(J) Kidnapping for purposes of robbery.

(K) Kidnapping with bodily harm.

(L) Attempted murder.

(M) Assault with a firearm or destructive device.

(N) Assault by any means of force likely to produce great bodily injury.

(O) Discharge of a firearm into an inhabited or occupied building.

(P) An offense described in Section 1203.09 of the Penal Code.

(Q) An offense described in Section 12022.5 or 12022.53 of the Penal Code.

(R) A felony offense in which the minor personally used a weapon described in any provision listed in Section 16590 of the Penal Code.

(S) A felony offense described in Section 136.1 or 137 of the Penal Code.

(T) 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.

(U) 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.

(V) 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.

(W) Torture as described in Sections 206 and 206.1 of the Penal Code.

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

(Y) Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.

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

(AA) Kidnapping as punishable in Section 209.5 of the Penal Code.

(BB) The offense described in subdivision (c) of Section 26100 of the Penal Code.

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

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

(b) The Division of Juvenile Facilities shall notify the Department of Finance when a county recalls a ward pursuant to Section 731.1. The division shall provide the department with the date the ward was recalled and the number of months the ward has served in a state facility. The division shall provide this information in the format prescribed by the department and within the timeframes established by the department.

(c) A ward committed to the Division of Juvenile Facilities may not be held in physical confinement for a period of time in excess of the maximum period of imprisonment that could be imposed upon an adult convicted of the offense or offenses that brought or continued the minor under the jurisdiction of the juvenile court. A ward committed to the Division of Juvenile Facilities also may not be held in physical confinement for a period of time in excess of the maximum term of physical confinement set by the court based upon the facts and circumstances of the matter or matters that brought or continued the ward under the jurisdiction of the juvenile court, which may not exceed the maximum period of adult confinement as determined pursuant to this section. This section does not limit the power of the Board of Parole Hearings to retain the ward on parole status for the period permitted by Section 1769.

SEC. 5. Judicial Remand Hearing.

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,~~ transferred to a court of criminal jurisdiction after a juvenile court transfer hearing, 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); ~~or (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).~~

~~(b)(1)(2) A person, other than one subject to subdivision (c), for whom prosecution was lawfully initiated in a court of criminal jurisdiction after a juvenile court transfer hearing may bring a motion for a disposition pursuant to juvenile court law following conviction by trial. 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 potential for rehabilitation if sentenced to be dealt with under the juvenile court law and the court shall ~~either conduct a fitness hearing in which it considers the factors enumerated in Section 707. The court shall impose a criminal sentence unless the person demonstrates by a preponderance of the evidence that a disposition under juvenile court law will best address the rehabilitative needs of the person and protect the community.~~ 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 juvenile court law, based on 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.~~

~~(2)(A) If the court conducting the fitness hearing finds that the person is not a fit and proper subject for juvenile court jurisdiction, it would not best address the rehabilitative needs of the person and protect the community for the conviction to be dealt with under juvenile court jurisdiction, then the person shall be sentenced by the court where he or she was convicted in accordance with paragraph (1), subdivision (a).~~

~~(B) If the court conducting the hearing on fitness finds that the person is a fit and proper subject for juvenile court jurisdiction it would best address the rehabilitative needs of the person and protect the community for the person to be sentenced under juvenile court jurisdiction, then the person shall be subject to a disposition pursuant to juvenile court law 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)(c) Upon conviction after trial, Where- where the conviction is for the type of offense which, in combination with the person's age, does not make would have made the person eligibleineligible for transfer to a court of criminal jurisdiction, the person shall be remanded to juvenile court and subject to a disposition in accordance with the provisions of subdivision (b) of Section 1170.19.~~

SEC. 6. Additional Amendments Relating To Transfer.

Sections 707.01, 707.1, 707.2, and 1732.6 of the Welfare and Institutions Code and Section 1170.19 of the Penal Code are hereby amended.

Section 707.01 of the Welfare and Institutions Code is amended to read:

~~707.01. (a) If a minor is found an unfit subject to be dealt with under the juvenile court law is transferred to adult court pursuant to Section 707, then the following shall apply:~~

~~(1) The jurisdiction of the juvenile court with respect to any previous adjudication resulting in the minor being made a ward of the juvenile court that did not result in the minor's commitment to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities Youth Authority shall not terminate, unless a hearing is held pursuant to Section 785 and the jurisdiction of the juvenile court over the minor is terminated.~~

~~(2) The jurisdiction of the juvenile court and the Youth Authority Division of Juvenile Facilities with respect to any previous adjudication resulting in the minor being made a ward of the juvenile court that resulted in the minor's commitment to the Youth Authority Division of Juvenile Facilities shall not terminate.~~

~~(3) All petitions pending against the minor shall be transferred to the court of criminal jurisdiction where one of the following applies:~~

~~(A) Jeopardy has not attached and the minor was 16 years of age or older at the time he or she is alleged to have violated the criminal statute or ordinance.~~

~~(B) Jeopardy has not attached and the minor is alleged to have violated a criminal statute for which he or she may be presumed or may be found to be not a fit and proper subject to be dealt with under the juvenile court law.~~

~~(4)(3) All petitions pending against the minor in juvenile court shall be disposed of in the juvenile court pursuant to the juvenile court law, ; where one of the following applies:~~

~~(A) Jeopardy has attached.~~

~~(B) The minor was under 16 years of age at the time he or she is alleged to have violated a criminal statute for which he or she may not be presumed or may not be found to be not a fit and proper subject to be dealt with under the juvenile court law.~~

~~(5) If, subsequent to a finding that a minor is an unfit subject to be dealt with under the juvenile court law, the minor is convicted of the violations which were the subject of the proceeding that resulted in a finding of unfitness, a new petition or petitions alleging the violation of any law or ordinance defining crime which would otherwise cause the minor to be a person described in Section 602 committed by the minor prior to or after the finding of unfitness need not be filed in the juvenile court if one of the following applies:~~

~~(A) The minor was 16 years of age or older at the time he or she is alleged to have violated a criminal statute or ordinance.~~

~~(B) The minor is alleged to have violated a criminal statute for which he or she may be presumed or may be found to be not a fit and proper subject to be dealt with under the juvenile court law.~~

~~(6) Subsequent to a finding that a minor is an unfit subject to be dealt with under the juvenile court law, which finding was based solely on either or both the minor's previous delinquent history or a lack of success of previous attempts by the juvenile court to rehabilitate the minor, and the minor was not convicted of the offense, a new petition or petitions alleging the violation of any law or ordinance defining crime which would otherwise cause the minor to be a person described in Section 602 committed by the minor prior to or after the finding of unfitness need not be filed in the juvenile court if one of the following applies:~~

~~(A) The minor was 16 years of age or older at the time he or she is alleged to have violated a criminal statute or ordinance.~~

~~(B) The minor is alleged to have violated a criminal statute for which he or she may be presumed or may be found to be not a fit and proper subject to be dealt with under the juvenile court law.~~

~~(7) If, subsequent to a finding that a minor is an unfit subject to be dealt with under the juvenile court law, the minor is not convicted of the violations which were the subject of the proceeding that resulted in a finding of unfitness and the finding of unfitness was not based solely on either or both the minor's previous delinquent history or a lack of success of previous attempts by the juvenile court to rehabilitate the minor, a new petition or petitions alleging the violation of any law or ordinance defining a crime which would otherwise cause the minor to be a person described in Section 602 committed by the minor prior to or after the finding of unfitness shall be first filed in the juvenile court. This paragraph does not preclude the prosecuting attorney from seeking to find the minor unfit in a subsequent petition.~~

~~(b) As to a violation referred to in paragraph (5) or (6) of subdivision (a), if a petition based on those violations has already been filed in the juvenile court, it shall be transferred to the court of criminal jurisdiction without any further proceedings.~~

~~(c) The probation officer shall not be required to investigate or submit a report regarding the fitness of a minor for any charge specified in paragraph (5) or (6) of subdivision (a) which is refiled in the juvenile court.~~

~~(d)~~(b) This section shall not be construed to affect the right to appellate review of a finding of unfitness an order to transfer or the duration of the jurisdiction of the juvenile court as specified in Section 607.

Section 707.1 of the Welfare and Institutions Code is amended to read:

707.1. (a) If the minor is ~~declared not a fit and proper subject to be dealt with under the juvenile court law,~~ transferred under juvenile court law to a court of criminal jurisdiction, ~~or as to a minor for whom charges in a petition or petitions in the juvenile court have been transferred to a court of criminal jurisdiction pursuant to Section 707.01,~~ the district attorney, or other appropriate prosecuting officer may file an accusatory pleading against the minor in a court of criminal jurisdiction. The case shall proceed from that point according to the laws applicable to a criminal case. If a prosecution has been commenced in another court but has been suspended while juvenile court proceedings are being held, it shall be ordered that the proceedings upon that prosecution shall resume.

(b)(1) The juvenile court, as to a minor alleged to have committed an offense described in ~~subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707 and subdivision (b), of Section 602 and whose case has been transferred under juvenile court law to a court of criminal jurisdiction,~~ who has been declared not a fit and proper subject to be dealt with under the juvenile court law, ~~or as to a minor for whom charges in a petition or petitions in the juvenile court will be transferred to a court of criminal jurisdiction pursuant to Section 707.01,~~ or as to a minor whose case has been filed directly in or transferred to a court of criminal jurisdiction pursuant to Section 707.01, may order the minor to be delivered to the custody of the sheriff upon a finding that the presence of the minor in the juvenile hall would endanger the safety of the public or be detrimental to the other inmates detained in the juvenile hall. Other minors whose cases have been transferred under juvenile court law to a court of criminal jurisdiction, ~~declared not fit and proper subjects to be dealt with under the juvenile court law,~~ if detained, shall remain in the juvenile hall pending final disposition by the criminal court or until they attain the age of 18, whichever occurs first.

(2) Upon attainment of the age of 18 years such a person who is detained in juvenile hall shall be delivered to the custody of the sheriff unless the court finds that it is in the best interests of the person and the public that he or she be retained in juvenile hall. If a hearing is requested by the person, the transfer to the custody of the sheriff shall not take place until after the court has made its findings.

(3) When a person under 18 years of age is detained pursuant to this section in a facility in which adults are confined the detention shall be in accordance with the conditions specified in subdivision (b) of Section 207.1.

(4) A minor ~~found not a fit and proper subject to be dealt with under the juvenile court law~~ whose case has been transferred under juvenile court law to a court of criminal jurisdiction shall, upon the conclusion of the fitness-transfer hearing, be entitled to release on bail or on his or her own recognizance ~~on~~ under the same circumstances, terms, and conditions as an adult alleged to have committed the same offense.

Section 707.2 of the Welfare and Institutions Code is amended to read:

707.2. (a) Prior to sentence and after considering a recommendation on the issue which shall be made by the probation department, the court of criminal jurisdiction may remand the minor to the custody of the ~~Department of the Youth Authority~~ Division of Juvenile Facilities for a period not to exceed 90 days for the purpose of evaluation and report concerning his or her amenability to training and treatment offered by the ~~Department of the Youth Authority~~ Juvenile Facilities. If the court decides not to remand the minor to the custody of the ~~Department of the Youth Authority~~ Division of Juvenile Facilities, the court shall make a finding on the record that the amenability evaluation is not necessary. ~~However, a court of criminal jurisdiction shall not sentence any minor who was under the age of 16 years when he or she committed any criminal offense to the state prison unless he or she has first been remanded to the custody of the Department of the Youth Authority for evaluation and report pursuant to this section.~~

The need to protect society, the nature and seriousness of the offense, the interests of justice, and the needs of the minor shall be the primary considerations in the court's determination of the appropriate disposition for the minor.

(b) This section shall not apply where commitment to the ~~Department of the Youth Authority~~ Division of Juvenile Facilities is prohibited pursuant to Section 1732.6.

Section 1732.6 of the Welfare and Institutions Code is amended to read:

1732.6. (a) ~~No minor shall be committed to the Youth Authority~~ Division of Juvenile Facilities when he or she is convicted in a criminal action ~~for an offense described in subdivision (e) of Section 667.5 or subdivision (e) of Section 1192.7 of the Penal Code~~ and is sentenced to incarceration for life, an indeterminate period to life, or a determinate period of years such that the maximum number of years of actual ~~potential~~ confinement when added to the minor's age would exceed 25 years. ~~Except as specified in subdivision (b),~~ In all other cases in which the minor has been convicted in a criminal action, the court shall retain discretion to sentence the minor to the Department of Corrections or to commit the minor to the Youth Authority Division of Juvenile Facilities.

(b) ~~No minor youth shall be committed to the Youth Authority when he or she is convicted in a criminal action for:~~

(1) ~~An offense described in subdivision (b) of Section 602, or~~

(2) ~~An offense described in paragraphs (1), (2), or (3) of subdivision (d) of Section 707, if the circumstances enumerated in those paragraphs are found to be true by the trier of fact.~~

(3) ~~An offense described in subdivision (b) of Section 707, if the minor had attained the age of 16 years of age or older at the time of commission of the offense.~~

~~(c) Notwithstanding any other provision of law, no person under the age of 16 years shall be housed in any facility under the jurisdiction of the Department of Corrections.~~

Section 1170.19 of the Penal Code is amended to read:

1170.19. (a) Notwithstanding any other provision of law, the following shall apply to a person sentenced pursuant to Section 1170.17.

(1) The person may be committed to the ~~Youth Authority~~ Division of Juvenile Facilities only to the extent the person meets the eligibility criteria set forth in Section 1732.6 of the Welfare and Institutions Code.

~~(2) The person shall not be housed in any facility under the jurisdiction of the Department of Corrections, if the person is under the age of 16 years.~~

~~(2)~~(3) The person shall have his or her criminal court records accorded the same degree of public access as the records pertaining to the conviction of an adult for the identical offense.

~~(3)~~(4) Subject to the knowing and intelligent consent of both the prosecution and the person being sentenced pursuant to this section, the The court may order a juvenile disposition under the juvenile court law, in lieu of a an adult sentence under this code, upon a finding that such an order would serve the best interests of justice, protection of the community, and the person being sentenced. Prior to ordering a juvenile disposition, the court shall cause to be received into evidence a social study by the probation officer, prepared pursuant to Section 706 of the Welfare and Institutions Code, and shall state that the social study made by the probation officer has been read and considered by the court.

(b) Notwithstanding any other provision of law, the following shall apply to a person who is eligible to receive a juvenile disposition pursuant to Section 1170.17.

(1) The person shall be entitled a hearing on the proper disposition of the case, conducted in accordance with the provisions of Section 706 of the Welfare and Institutions Code. The court in which the conviction occurred shall ~~order the probation department to prepare a written social study and recommendation concerning the proper disposition of the case, prior to conducting the hearing or~~ remand the matter to the juvenile court for purposes of preparing the social study, conducting the disposition hearing pursuant to Section 706 of the Welfare and Institutions Code, and making a disposition order under the juvenile court law.

(2) The person shall have his or her conviction deemed to be a finding of delinquency wardship true petition and the person declared to be a ward under Section 602 of the Welfare and Institutions Code.

(3) The person shall have his or her criminal court records accorded the same degree of confidentiality as if the matter had been initially prosecuted as a delinquency petition in the juvenile court.

~~(4) Subject to the knowing and intelligent consent of both the prosecution and the person being sentenced pursuant to this section, the court may impose an adult sentence under this code, in~~

~~lieu of ordering a juvenile disposition under the juvenile court law, upon a finding that such an order would serve the best interests of justice, protection of the community, and the person being sentenced. Prior to ordering an adult sentence, the court shall cause to be received into evidence a social study by the probation officer, prepared pursuant to Section 706 of the Welfare and Institutions Code, and shall state that the social study prepared by the probation officer has been read and considered by the court.~~

SEC. 7. Juvenile Court Records.

Section 781 of the Welfare and Institutions Code is amended to read:

781. (a)(1)(A) In any case in which a petition has been filed with a juvenile court to commence proceedings to adjudge a person a ward of the court, in any case in which a person is cited to appear before a probation officer or is taken before a probation officer pursuant to Section 626, or in any case in which a minor is taken before any officer of a law enforcement agency, the person or the county probation officer may, five years or more after the jurisdiction of the juvenile court has terminated as to the person, or, in a case in which no petition is filed, five years or more after the person was cited to appear before a probation officer or was taken before a probation officer pursuant to Section 626 or was taken before any officer of a law enforcement agency, or, in any case, at any time after the person has reached 18 years of age, petition the court for sealing of the records, including records of arrest, relating to the person's case, in the custody of the juvenile court and probation officer and any other agencies, including law enforcement agencies, entities, and public officials as the petitioner alleges, in his or her petition, to have custody of the records. The court shall notify the district attorney of the county and the county probation officer, if he or she is not the petitioner, and the district attorney or probation officer or any of their deputies or any other person having relevant evidence may testify at the hearing on the petition. If, after hearing, the court finds that since the termination of jurisdiction or action pursuant to Section 626, as the case may be, he or she has not been convicted of a felony or of any misdemeanor involving moral turpitude and that rehabilitation has been attained to the satisfaction of the court, it shall order all records, papers, and exhibits in the person's case in the custody of the juvenile court sealed, including the juvenile court record, minute book entries, and entries on dockets, and any other records relating to the case in the custody of the other agencies, entities and officials as are named in the order. Once the court has ordered the person's records sealed, the proceedings in the case shall be deemed never to have occurred, and the person may properly reply accordingly to any inquiry about the events, the records of which are ordered sealed.

(B) The court shall send a copy of the order to each agency, entity and official named in the order, directing the agency to seal its records. Each agency, entity and official shall seal the records in its custody as directed by the order, shall advise the court of its compliance, and thereupon shall seal the copy of the court's order for sealing of records that the agency, entity, or official received.

(C) In any case in which a ward of the juvenile court is subject to the registration requirements set forth in Section 290 of the Penal Code, a court, in ordering the sealing of the juvenile records of the person, shall also provide in the order that the person is relieved from the registration

requirement and for the destruction of all registration information in the custody of the Department of Justice and other agencies, entities, and officials.

~~(D) Notwithstanding any other law, the court shall not order the person's records sealed in any case in which the person has been found by the juvenile court to have committed an offense listed in subdivision (b) of Section 707 when he or she had attained 14 years of age or older.~~

(2) An unfulfilled order of restitution that has been converted to a civil judgment pursuant to Section 730.6 shall not be a bar to sealing a record pursuant to this subdivision.

(3) Outstanding restitution fines and court-ordered fees shall not be considered when assessing whether a petitioner's rehabilitation has been attained to the satisfaction of the court and shall not be a bar to sealing a record pursuant to this subdivision.

(4) The person who is the subject of records sealed pursuant to this section may petition the superior court to permit inspection of the records by persons named in the petition, and the superior court may order the inspection of the records. Except as provided in subdivision (b), the records shall not be open to inspection.

(b) In any action or proceeding based upon defamation, a court, upon a showing of good cause, may order any records sealed under this section to be opened and admitted into evidence. The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties, and any other person who is authorized by the court to inspect them. Upon the judgment in the action or proceeding becoming final, the court shall order the records sealed.

(c)(1) Subdivision (a) does not apply to Department of Motor Vehicle records of any convictions for offenses under the Vehicle Code or any local ordinance relating to the operation, stopping and standing, or parking of a vehicle where the record of any such conviction would be a public record under Section 1808 of the Vehicle Code. However, if a court orders a case record containing any such conviction to be sealed under this section, and if the Department of Motor Vehicles maintains a public record of such a conviction, the court shall notify the Department of Motor Vehicles of the sealing and the department shall advise the court of its receipt of the notice.

(2) Notwithstanding any other provision of law, subsequent to the notification, the Department of Motor Vehicles shall allow access to its record of convictions only to the subject of the record and to insurers which have been granted requestor code numbers by the department. Any insurer to which such a record of conviction is disclosed, when such a conviction record has otherwise been sealed under this section, shall be given notice of the sealing when the record is disclosed to the insurer. The insurer may use the information contained in the record for purposes of determining eligibility for insurance and insurance rates for the subject of the record, and the information shall not be used for any other purpose nor shall it be disclosed by an insurer to any person or party not having access to the record.

(3) This subdivision does not prevent the sealing of any record which is maintained by any agency or party other than the Department of Motor Vehicles.

(4) This subdivision does not affect the procedures or authority of the Department of Motor Vehicles for purging department records.

(d) Unless for good cause the court determines that the juvenile court record shall be retained, the court shall order the destruction of a person's juvenile court records that are sealed pursuant to this section as follows: five years after the record was ordered sealed, if the person who is the subject of the record was alleged or adjudged to be a person described by Section 601; or when the person who is the subject of the record reaches 38 years of age if the person was alleged or adjudged to be a person described by Section 602, ~~except that if the subject of the record was found to be a person described in Section 602 because of the commission of an offense listed in subdivision (b) of Section 707 when he or she was 14 years of age or older, the record shall not be destroyed.~~ Any other agency in possession of sealed records may destroy its records five years after the record was ordered sealed.

(e) The court may access a file that has been sealed pursuant to this section for the limited purpose of verifying the prior jurisdictional status of a ward who is petitioning the court to resume its jurisdiction pursuant to subdivision (e) of Section 388. This access shall not be deemed an unsealing of the record and shall not require notice to any other entity.

~~(f) This section shall not permit the sealing of a person's juvenile court records for an offense where the person is convicted of that offense in a criminal court pursuant to the provisions of Section 707.1. This subdivision is declaratory of existing law.~~

~~(g)~~(f)(1) This section does not prohibit a court from enforcing a civil judgment for an unfulfilled order of restitution obtained pursuant to Section 730.6. A minor is not relieved from the obligation to pay victim restitution, restitution fines, and court-ordered fines and fees because the minor's records are sealed.

(2) A victim or a local collection program may continue to enforce victim restitution orders, restitution fines, and court-ordered fines and fees after a record is sealed. The juvenile court shall have access to any records sealed pursuant to this section for the limited purposes of enforcing a civil judgment or restitution order.

~~(h)~~(g)(1) On and after January 1, 2015, each court and probation department shall ensure that information regarding the eligibility for and the procedures to request the sealing and destruction of records pursuant to this section shall be provided to each person who is either of the following:

(A) A person for whom a petition has been filed on or after January 1, 2015, to adjudge the person a ward of the juvenile court.

(B) A person who is brought before a probation officer pursuant to Section 626.

(2) The Judicial Council shall, on or before January 1, 2015, develop informational materials for purposes of paragraph (1) and shall develop a form to petition the court for the sealing and destruction of records pursuant to this section. The informational materials and the form shall be provided to each person described in paragraph (1) when jurisdiction is terminated or when the case is dismissed.

SEC. 8. Parole Hearings.

Section 3051 of the Penal Code is amended to read:

(a)(1) A youth offender parole hearing is a hearing by the Board of Parole Hearings for the purpose of reviewing the parole suitability of any prisoner who was under 23 years of age at the time of his or her controlling offense.

(2) For the purposes of this section, the following definitions shall apply:

(A) "Incarceration" means detention in a city or county jail, a local juvenile facility, a mental health facility, a Division of Juvenile Justice facility, or a Department of Corrections and Rehabilitation facility.

(B) "Controlling offense" means the offense ~~or enhancement~~ for which any sentencing court imposed the longest term of imprisonment.

(b)(1) A person who was convicted of a controlling offense that was committed before the person had attained 23 years of age and for which the sentence is a determinate sentence shall be eligible for release on parole at a youth offender parole hearing by the board during his or her 15th year of incarceration, unless previously released pursuant to other statutory provisions.

(2) A person who was convicted of a controlling offense that was committed before the person had attained 23 years of age and for which the sentence is a life term of less than 25 years to life shall be eligible for release on parole by the board during his or her 20th year of incarceration at a youth offender parole hearing, unless previously released or entitled to an earlier parole consideration hearing pursuant to other statutory provisions.

(3) A person who was convicted of a controlling offense that was committed before the person had attained 23 years of age and for which the sentence is a life term of 25 years to life shall be eligible for release on parole by the board during his or her 25th year of incarceration at a youth offender parole hearing, unless previously released or entitled to an earlier parole consideration hearing pursuant to other statutory provisions.

(c) An individual subject to this section shall meet with the board pursuant to subdivision (a) of Section 3041.

(d) The board shall conduct a youth offender parole hearing to consider release. At the youth offender parole hearing, the board shall release the individual on parole as provided in Section 3041, except that the board shall act in accordance with subdivision (c) of Section 4801.

(e) The youth offender parole hearing to consider release shall provide for a meaningful opportunity to obtain release. The board shall review and, as necessary, revise existing regulations and adopt new regulations regarding determinations of suitability made pursuant to this section, subdivision (c) of Section 4801, and other related topics, consistent with relevant case law, in order to provide that meaningful opportunity for release.

(f)(1) In assessing growth and maturity, psychological evaluations and risk assessment instruments, if used by the board, shall be administered by licensed psychologists employed by the board and shall take into consideration the diminished culpability of juveniles as compared to that of adults, the hallmark features of youth, and any subsequent growth and increased maturity of the individual.

(2) Family members, friends, school personnel, faith leaders, and representatives from community-based organizations with knowledge about the individual before the crime or his or her growth and maturity since the time of the crime may submit statements for review by the board.

(3) Nothing in this section is intended to alter the rights of victims at parole hearings.

(g) If parole is not granted, the board shall set the time for a subsequent youth offender parole hearing in accordance with paragraph (3) of subdivision (b) of Section 3041.5. In exercising its discretion pursuant to paragraph (4) of subdivision (b) and subdivision (d) of Section 3041.5, the board shall consider the factors in subdivision (c) of Section 4801. No subsequent youth offender parole hearing shall be necessary if the offender is released pursuant to other statutory provisions prior to the date of the subsequent hearing.

(h) This section shall not apply to cases in which sentencing occurs pursuant to ~~Section 1170.12, subdivisions (b) to (i), inclusive, of Section 667, or Section 667.61~~, or in which an individual was sentenced to life in prison without the possibility of parole. This section shall not apply to an individual to whom this section would otherwise apply, but who, subsequent to attaining 23 years of age, commits an additional crime for which malice aforethought is a necessary element of the crime or for which the individual is sentenced to life in prison.

(i)(1) The board shall complete all youth offender parole hearings for individuals who became entitled to have their parole suitability considered at a youth offender parole hearing prior to the effective date of the act that added paragraph (2) by July 1, 2015.

(2)(A) The board shall complete all youth offender parole hearings for individuals who were sentenced to indeterminate life terms and who become entitled to have their parole suitability considered at a youth offender parole hearing on the effective date of the act that added this paragraph by July 1, 2017.

(B) The board shall complete all youth offender parole hearings for individuals who were sentenced to determinate terms and who become entitled to have their parole suitability considered at a youth offender parole hearing on the effective date of the act that added this paragraph by July 1, 2021. The board shall, for all individuals described in this subparagraph, conduct the consultation described in subdivision (a) of Section 3041 before July 1, 2017.

SEC. 9. Amendment.

This Act shall be broadly construed to accomplish its purposes. The provisions of this measure may be amended by a statute that is passed by a two-thirds vote of the members of each house of the Legislature and presented to the Governor, so long as such amendments are consistent with and further the intent of this Act. The provisions of this measure may be amended to further

reduce the number or categories of youth transferred to the adult system or otherwise incarcerated by a statute that is passed by a majority vote of the members of each house of the Legislature and presented to the Governor.

SEC. 10. Severability.

If any provision of this measure, or part of this measure, or the application of any provision or part to any person or circumstances, is for any reason held to be invalid, the remaining provisions, or applications of provisions, shall not be affected, but shall remain in full force and effect, and to this end the provisions of this measure are severable.

SEC. 11. Conflicting Initiatives.

(a) In the event that this measure and another measure on the same subject matter, including but not limited to criminal justice and rehabilitation, shall appear on the same statewide ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes than a measure deemed to be in conflict with it, the provisions of this measure shall prevail in their entirety, and the other measure or measures shall be null and void.

(b) If this measure is approved by voters but superseded by law by any other conflicting measure approved by voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force and effect.

SEC. 12. Proponent Standing.

Notwithstanding any other provision of law, if the State, government agency, or any of its officials fail to defend the constitutionality of this act, following its approval by the voters, any other government employer, the proponent, or in their absence, any citizen of this State shall have the authority to intervene in any court action challenging the constitutionality of this act for the purpose of defending its constitutionality, whether such action is in trial court, on appeal, and on discretionary review by the Supreme Court of California and/or the Supreme Court of the United States. The reasonable fees and costs of defending the action shall be a charge on funds appropriated to the Department of Justice, which shall be satisfied promptly.

SEC. 13. Liberal Construction.

This Act shall be liberally construed to effectuate its purposes.

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **O.G. v. S.C.**
(PEOPLE)

Case Number: **S259011**

Lower Court Case Number: **B295555**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **michelle.contois@ventura.org**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF	RPI Reply Amicus
REQUEST FOR JUDICIAL NOTICE	RPI Request Judicial Notice

Service Recipients:

Person Served	Email Address	Type	Date / Time
Susan Burrell Pacific Juvenile Defender Center	sueburrellpjdc@gmail.org	e-Serve	10/8/2020 4:21:48 PM
Tracie Campbell California Dept of Justice, Office of the Attorney General	tracie.campbell@doj.ca.gov	e-Serve	10/8/2020 4:21:48 PM
Rebecca Jones Rebecca P. Jones, Attorney at law PC 163313	jones163313@gmail.com	e-Serve	10/8/2020 4:21:48 PM
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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

10/8/2020

Date

/s/Michelle Contois

Signature

Contois, Michelle (174208)

Last Name, First Name (PNum)

Ventura County District Attorney

