

**Introduced by Senator Cortese**February 10, 2021

---

---

An act to amend Sections 654.3, 790, and 791 of the Welfare and Institutions Code, relating to juveniles.

## LEGISLATIVE COUNSEL'S DIGEST

SB 383, as introduced, Cortese. Juveniles: informal supervision: deferred entry of judgment.

Existing law subjects a person between 12 and 17 years of age, inclusive, who commits a crime, and a person under 12 years of age who commits specified crimes, to the jurisdiction of the juvenile court, which may adjudge that person to be a ward of the court. Existing law authorizes a probation officer, in certain circumstances, to delineate a specific program of supervision for a minor who is alleged to have committed a crime. Existing law, as amended by the Gang Violence and Juvenile Crime Prevention Act of 1998, approved as Proposition 21 at the March 7, 2000, statewide primary election, makes a minor ineligible for this program of supervision if the minor is alleged to have committed a felony offense when the minor was at least 14 years of age, except in unusual cases in which the court determines that the interest of justice would best be served by placement of the minor in the program of supervision. The Legislature may directly amend Proposition 21 by a statute passed in each house by a  $\frac{2}{3}$  vote, or by a statute that becomes effective only when approved by the voters.

This bill would amend Proposition 21 by deleting the prohibition on including those minors in that program of supervision.

Under existing law, as added by Proposition 21, a minor may be eligible for deferred entry of judgment if certain conditions apply. If a minor is eligible for deferred entry of judgment, existing law requires

the prosecutor to file a declaration with the court explaining the minor's eligibility. Existing law authorizes the court to order the probation department to investigate the minor, determine which programs would accept the minor, and report its findings and recommendations to the court. Existing law authorizes the court to grant deferred entry of judgment if the court finds that the minor is suitable for deferred entry of judgment and would benefit from education, treatment, and rehabilitation efforts.

This bill would authorize a court, if a minor is eligible for deferred entry of judgment, but the minor resides in a different county and the case will be transferred to the minor's county of residence, to adjudicate the case without determining the minor's suitability for deferred entry of judgment. The bill would authorize the receiving court to order the probation department to make the investigation and file the report and recommendations described above; determine the minor's suitability for deferred entry of judgment; and modify the transferring court's finding accordingly.

By increasing the duties of county probation departments, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

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

- 1 SECTION 1. Section 654.3 of the Welfare and Institutions
- 2 Code is amended to read:
- 3 654.3. No minor shall be eligible for the program of supervision
- 4 set forth in Section 654 or 654.2 in the following cases, except in
- 5 an unusual case where the interests of justice would best be served
- 6 and the court specifies on the record the reasons for its decision:
- 7 (a) A petition alleges that the minor has violated an offense
- 8 listed in subdivision (b) of Section 707.

1 (b) A petition alleges that the minor has sold or possessed for  
2 sale a controlled substance as defined in Chapter 2 (commencing  
3 with Section 11053) of Division 10 of the Health and Safety Code.

4 (c) A petition alleges that the minor has violated Section 11350  
5 or 11377 of the Health and Safety Code where the violation takes  
6 place at a public or private elementary, vocational, junior high  
7 school, or high school, or a violation of Section 245.5, 626.9, or  
8 626.10 of the Penal Code.

9 (d) A petition alleges that the minor has violated Section 186.22  
10 of the Penal Code.

11 (e) The minor has previously participated in a program of  
12 supervision pursuant to Section 654.

13 (f) The minor has previously been adjudged a ward of the court  
14 pursuant to Section 602.

15 (g) A petition alleges that the minor has violated an offense in  
16 which the restitution owed to the victim exceeds one thousand  
17 dollars (\$1,000). For purposes of this subdivision, the definition  
18 of “victim” in paragraph (1) of subdivision (a) of Section 730.6  
19 and “restitution” in subdivision (h) of Section 730.6 shall apply.

20 ~~(h) The minor is alleged to have committed a felony offense  
21 when the minor was at least 14 years of age. Except in unusual  
22 cases where the court determines the interest of justice would best  
23 be served by a proceeding pursuant to Section 654 or 654.2, a  
24 petition alleging that a minor who is 14 years of age or over has  
25 committed a felony offense shall proceed under Article 20.5  
26 (commencing with Section 790) or Article 17 (commencing with  
27 Section 675).~~

28 SEC. 2. Section 790 of the Welfare and Institutions Code is  
29 amended to read:

30 790. (a) Notwithstanding Section 654 or 654.2, or any other  
31 provision of law, this article shall apply whenever a case is before  
32 the juvenile court for a determination of whether a minor is a  
33 person described in Section 602 because of the commission of a  
34 felony offense, if all of the following circumstances apply:

35 (1) The minor has not previously been declared to be a ward of  
36 the court for the commission of a felony offense.

37 (2) The offense charged is not one of the offenses enumerated  
38 in subdivision (b) of Section 707.

1 (3) The minor has not previously been committed to the custody  
2 of the Department of Corrections and Rehabilitation, Division of  
3 Juvenile Facilities.

4 (4) The minor's record does not indicate that probation has ever  
5 been revoked without being completed.

6 (5) The minor is at least 14 years of age at the time of the  
7 hearing.

8 (6) The minor is eligible for probation pursuant to Section  
9 1203.06 of the Penal Code.

10 (7) The offense charged is not rape, sodomy, oral copulation,  
11 or an act of sexual penetration specified in Section 289 of the Penal  
12 Code when the victim was prevented from resisting due to being  
13 rendered unconscious by any intoxicating, anesthetizing, or  
14 controlled substance, or when the victim was at the time incapable,  
15 because of mental disorder or developmental or physical disability,  
16 of giving consent, and that was known or reasonably should have  
17 been known to the minor at the time of the offense.

18 (b) The prosecuting attorney shall review ~~his or her~~ *their* file to  
19 determine whether or not paragraphs (1) to (7), inclusive, of  
20 subdivision (a) apply. If the minor is found eligible for deferred  
21 entry of judgment, the prosecuting attorney shall file a declaration  
22 in writing with the court or state for the record the grounds upon  
23 which the determination is based, and shall make this information  
24 available to the minor and ~~his or her~~ *their* attorney. Upon a finding  
25 that the minor is also suitable for deferred entry of judgment and  
26 would benefit from education, treatment, and rehabilitation efforts,  
27 the court may grant deferred entry of judgment. Under this  
28 procedure, the court may set the hearing for deferred entry of  
29 judgment at the initial appearance under Section 657. The court  
30 shall make findings on the record that a minor is appropriate for  
31 deferred entry of judgment pursuant to this article in any case  
32 where deferred entry of judgment is granted.

33 (c) (1) *If a minor is eligible for deferred entry of judgment, but*  
34 *the minor resides in a different county and the case will be*  
35 *transferred, as described in Section 750, the court may adjudicate*  
36 *the case without determining the minor's suitability for deferred*  
37 *entry of judgment to enable the court in the minor's county of*  
38 *residence to make that determination.*

39 (2) *If a minor is eligible for deferred entry of judgment, but the*  
40 *court did not determine the minor's suitability for deferred entry*

1 *of judgment pursuant to paragraph (1), upon transfer of the case*  
2 *to the minor's county of residence, the receiving court may, prior*  
3 *to determining the disposition of the case, determine the minor's*  
4 *suitability for deferred entry of judgment and modify the*  
5 *transferring court's finding accordingly.*

6 SEC. 3. Section 791 of the Welfare and Institutions Code is  
7 amended to read:

8 791. (a) The prosecuting attorney's written notification to the  
9 minor shall also include all of the following:

10 (1) A full description of the procedures for deferred entry of  
11 judgment.

12 (2) A general explanation of the roles and authorities of the  
13 probation department, the prosecuting attorney, the program, and  
14 the court in that process.

15 (3) A clear statement that, in lieu of jurisdictional and disposition  
16 hearings, the court may grant a deferred entry of judgment with  
17 respect to any offense charged in the petition, provided that the  
18 minor admits each allegation contained in the petition and waives  
19 time for the pronouncement of judgment, and that upon the  
20 successful completion of the terms of probation, as defined in  
21 Section 794, the positive recommendation of the probation  
22 department, and the motion of the prosecuting attorney, but no  
23 sooner than 12 months and no later than 36 months from the date  
24 of the minor's referral to the program, the court shall dismiss the  
25 charge or charges against the minor.

26 (4) A clear statement that upon any failure of the minor to  
27 comply with the terms of probation, including the rules of any  
28 program the minor is directed to attend, or any circumstances  
29 specified in Section 793, the prosecuting attorney or the probation  
30 department, or the court on its own, may make a motion to the  
31 court for entry of judgment and the court shall render a finding  
32 that the minor is a ward of the court pursuant to Section 602 for  
33 the offenses specified in the original petition and shall schedule a  
34 dispositional hearing.

35 (5) An explanation of record retention and disposition resulting  
36 from participation in the deferred entry of judgment program and  
37 the minor's rights relative to answering questions about ~~his or her~~  
38 *their* arrest and deferred entry of judgment following successful  
39 completion of the program.

1 (6) A statement that if the minor fails to comply with the terms  
2 of the program and judgment is entered, the offense may serve as  
3 a basis for a finding of unfitness pursuant to subdivision (d) of  
4 *transferring the minor to a court of criminal jurisdiction pursuant*  
5 *to Section 707, if the minor commits two subsequent felony*  
6 *offenses.*

7 (b) If the minor consents and waives ~~his or her~~ *their* right to a  
8 speedy jurisdictional hearing, the court may refer the case to the  
9 probation department or the court may summarily grant deferred  
10 entry of judgment if the minor admits the charges in the petition  
11 and waives time for the pronouncement of judgment. When  
12 directed by the court, the probation department shall make an  
13 investigation and take into consideration the defendant's age,  
14 maturity, educational background, family relationships,  
15 demonstrable motivation, treatment history, if any, and other  
16 mitigating and aggravating factors in determining whether the  
17 minor is a person who would be benefited by education, treatment,  
18 or rehabilitation. The probation department shall also determine  
19 which programs would accept the minor. The probation department  
20 shall report its findings and recommendations to the court. The  
21 court shall make the final determination regarding education,  
22 treatment, and rehabilitation of the minor.

23 (c) *If a minor is eligible for deferred entry of judgment, but the*  
24 *court did not determine the minor's suitability for deferred entry*  
25 *of judgment pursuant to paragraph (1) of subdivision (c) of Section*  
26 *790, when the case is transferred, the receiving court may, prior*  
27 *to determining the disposition of the case, order the probation*  
28 *department to make an investigation and report pursuant to*  
29 *subdivision (b) to determine the minor's suitability for deferred*  
30 *entry of judgment.*

31 ~~(e)~~

32 (d) A minor's admission of the charges contained in the petition  
33 pursuant to this chapter shall not constitute a finding that a petition  
34 has been sustained for any purpose, unless a judgment is entered  
35 pursuant to subdivision (b) of Section 793.

36 SEC. 4. If the Commission on State Mandates determines that  
37 this act contains costs mandated by the state, reimbursement to  
38 local agencies and school districts for those costs shall be made

1 pursuant to Part 7 (commencing with Section 17500) of Division  
2 4 of Title 2 of the Government Code.

O