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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** AB 2813                      **Hearing Date:** June 14, 2016  
**Author:** Bloom  
**Version:** June 1, 2016  
**Urgency:** No                              **Fiscal:** Yes  
**Consultant:** AA

**Subject:** *Juvenile Offenders: Dual-Status Minors*

## HISTORY

**Source:** Youth Law Center

**Prior Legislation:** AB 388 (Chesbro), Chapter 760, Statutes of 2014

**Support:** Aspiranet; Advokids; Alameda County Office of Education; California Alliance for Youth and Community Justice; California Catholic Conference; California Coalition for Youth; Children Now; Commonwealth The Juvenile Justice Program; Ella Baker Center for Human Rights; John Burton Foundation; Lawyers' Committee for Civil Rights of the San Francisco Bay Area; National Association of Social Workers, California Chapter; National Center for Youth Law; Prison Law Office; Public Counsel; W. Haywood Burns Institute

**Opposition:** None Known

**Assembly Floor Vote:** 77 - 0

## PURPOSE

*The purpose of this bill is to revise the conditions relevant to continuing the detention of a minor who has been taken into custody, by 1) deleting considerations relating to whether the minor needs parental control, is destitute, or lives in an unfit place, as specified; 2) providing that the decision to retain custody over a dependent minor may not be based on that status, a determination that the minor's current placement is contrary to their welfare, or the inability of child welfare services to provide a placement for the minor, as specified; 3) require probation to immediately release a dependent child to child welfare services or their foster parent or caregiver unless certain conditions relating to safety, risk of flight or violation of a court order are present, as specified; and 4) provide that these provisions do not limit the authority of probation to refer a minor to child welfare services, as specified.*

*Current law* requires probation to immediately release a minor who has been taken into temporary custody to the custody of his or her parent, legal guardian, or responsible relative unless it can be demonstrated upon the evidence before the court that continuance in the home is contrary to the minor's welfare and one or more of the following conditions exist:

- 1) The minor is in need of proper and effective parental care or control and has no parent, legal guardian, or responsible relative; or has no parent, legal guardian, or responsible

relative willing to exercise or capable of exercising that care or control; or has no parent, legal guardian, or responsible relative actually exercising that care or control.

- 2) The minor is destitute or is not provided with the necessities of life or is not provided with a home or suitable place of abode.
- 3) The minor is provided with a home which is an unfit place for him or her by reason of neglect, cruelty, depravity or physical abuse by either of his or her parents, or by his or her legal guardian or other person in whose custody or care he or she is entrusted.
- 4) Continued detention of the minor is a matter of immediate and urgent necessity for the protection of the minor or reasonable necessity for the protection of the person or property of another.
- 5) The minor is likely to flee the jurisdiction of the court.
- 6) The minor has violated an order of the juvenile court.
- 7) The minor is physically dangerous to the public because of a mental or physical deficiency, disorder or abnormality. (Welfare and Institutions Code (WIC) § 628.)

*This bill* would delete conditions (1) through (3) above.

*This bill* additionally would provide that a “probation officer’s decision to detain a minor who is currently a dependent of the juvenile court pursuant to Section 300 or the subject of a petition to declare him or her a dependent of the juvenile court pursuant to Section 300 and who has been removed from the custody of his or her parent or guardian by the juvenile court shall not be based on any of the following:

- (A) The minor’s status as a dependent of the juvenile court or as the subject of a petition to declare him or her a dependent of the juvenile court.
- (B) A determination that continuance in the minor’s current placement is contrary to the minor’s welfare.
- (C) The child welfare services department’s inability to provide a placement for the minor.”

*This bill* would require the probation officer to immediately release a minor who is a dependent ward of the court, or subject to a dependency petition to the custody of the child welfare services department or his or her current foster parent or other caregiver unless the probation officer determines that one or more of the conditions described above (4-7) exist.

*This bill* would provide that this section does not limit a probation officer’s authority to refer a minor to child welfare services.

#### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state’s ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its “ROCA” policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as “of December 9, 2015, 112,510 inmates were housed in the State’s 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015.” (Defendants’ December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, Coleman v. Brown, Plata v. Brown (fn. omitted).) One year ago, 115,826 inmates were housed in the State’s 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants’ December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, Coleman v. Brown, Plata v. Brown (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, Coleman v. Brown, Plata v. Brown (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

## COMMENTS

### 1. Stated Need for This Bill

The author states:

The problem this bill seeks to address is the unnecessary and unfair over-detention of foster youth in juvenile halls. Some group homes and residential facilities respond to minor misconduct by calling law enforcement and these minors can then be arrested, detained and have delinquency petitions filed against them. Under existing law, minors are granted certain protections from detention, and probation officers and courts are required to release them to their parents

unless they are a danger to themselves or others; foster youth do not have the same protection in statute. In 2014, the legislature passed a bill (AB 388) to address the over-detention of foster youth. That bill made a variety of changes to existing law, one of which was requiring that courts not use a minor's status as a foster youth as a reason to detain them. This was an important and helpful step, but what was left unaddressed was the probation department's decision to detain a foster youth, which not only results in the initial detention of youth, but also influences the court's decision to detain a youth.

This bill will address the unnecessary detention of foster youth by addressing a probation officer's initial decision to detain a minor. The bill will require:

- Probation departments to take immediate steps to notify child welfare services or foster parents when a minor is in custody and where they are being held
- Probation officers to release the minor to the custody of child welfare services or his or her current foster parents or other caregiver unless it can be demonstrated that continued detention of the minor is a matter of immediate necessity for the protection of the person or another.

The probation officer's decision to detain the minor may not be based on their status as a dependent of the court.

## **2. This Bill; Background**

Supporters of this bill submit that previous legislation, AB 388 (Chesbro) (2014), addressed the over-detention of foster youth at the detention hearing stage by requiring that the court's decision to detain not be based on a youth's status as a dependent. The bill did not apply to a probation officer's initial decision to detain prior to the court hearing. This bill, according to those who support the bill, will harmonize the criteria for detention probation with those used by the court at the detention hearing, ensuring that no foster youth is held in a juvenile hall because they are a foster youth. Detention can negatively impact a young person's mental and physical well-being, their education, and their employment opportunities. Time spent in detention can increase a youth's likelihood to recidivate and spend time in detention as an adult.

As explained in the Assembly Human Services Committee's analysis of this bill, the purpose of California's Child Welfare Services (CWS) system is to provide for the protection and the health and safety of children. Within this purpose, the desired outcome is to reunite children with their biological parents, when appropriate, to help preserve and strengthen families. If reunification with the biological family is not appropriate, children are placed in the best environment possible, whether that is with a relative, through adoption, or with a guardian, such as a nonrelated extended family member, as specified. In the case of children who are at risk of abuse, neglect or abandonment, county juvenile courts hold legal jurisdiction and children are served by the CWS system through the appointment of a social worker. Through this system, there are multiple stages where the custody of the child or his or her placement are evaluated, reviewed and determined by the judicial system, in consultation with the child's social worker to help provide the best possible services to the child.

At the time a child is identified as needing child welfare services and is in the temporary custody of a social worker, the social worker is required to identify whether there is a relative or guardian to whom a child may be released, unless the social worker believes that the child would be at risk of abuse, neglect or abandonment if placed with that relative or guardian. State law also lays out the conditions under which a court may deem a child a dependent or ward of the court, including when the parent has been incarcerated or institutionalized and is unable to arrange for care for the child, such as placement with a known relative or nonrelative extended family member. If the child is deemed a dependent or ward of the court, the court may maintain the child in his or her home, remove the child from the home but with the goal of reunifying the child with his or her family, or identify another form of permanent placement. Unless the child is unable to be placed with the parent, the court is required to give preference to a relative of the child in order to preserve the child's association with his or her family. Associated with the placement, the assigned social worker shall develop a case plan for the child, which outlines the placement for the child, sets forth services necessary for the child, and outlines the provision of reunification services, if necessary and appropriate.

Dual-status youth – those youth involved in the juvenile justice system and the child welfare system – are recognized as facing greater challenges and adversity as they move into adulthood. They often face challenges that youth involved in only one of the systems or youth involved in neither of the systems face, and their outcomes are often poorer and require greater supports and services to address their needs, reduce recidivism and foster rehabilitation. Legislation and authorized various pilot projects have been enacted to address the needs of these youth, but a comprehensive statewide approach to meet those needs and help youth successfully transition to adulthood does not yet exist.

Counties can adopt dual status protocols in order to allow for better oversight and provision of services to youth who are involved in both the child welfare and juvenile justice systems. Dual status for children who are both wards of the court and dependent children allow for better oversight and coordination between the child welfare services and probation systems. Counties that elect to participate in this voluntary program are tasked with creating a dual status protocols to permit a youth who meets specified criteria to be designated as both a dependent child and a ward of the court simultaneously.

According to the Judicial Council website, 18 of California's 58 counties have elected to develop these protocols. Counties that have elected to participate include: Los Angeles, San Diego, Santa Clara, Riverside, and San Bernardino Counties; with these large counties involved, most youth involved with both the dependency and delinquency systems in California today live in dual-status jurisdictions.

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