
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 1143 **Hearing Date:** April 19, 2016
Author: Leno
Version: March 29, 2016
Urgency: No **Fiscal:** Yes
Consultant: AA

Subject: *Juveniles: Room Confinement*

HISTORY

Source: Chief Probation Officers of California
Ella Baker Center for Human Rights

Prior Legislation: SB 124 (Leno) – 2015 held in Assembly Appropriations
SB 970 (Yee) (2014) – died in the Senate
SB 61 (Yee) (2013) – died in the Assembly
SB 1363 (Yee) (2012) – failed passage, Senate Public Safety

Support: American Civil Liberties Union of California; Alliance for Boys and Men of Color; American Friends Service Committee; California Attorneys for Criminal Justice; California Catholic Conference; California Prison Focus; Center on Juvenile and Criminal Justice; Children Now; Children’s Defense Fund – California; Children’s Law and Policy; Community Works; Communities United for Restorative Youth Justice; Courage Campaign; Equality California; First Congregational Church of Palo Alto; GSA Network of California; Immigrant Legal Resource Center; Jewish Community High School; Justice Not Jails; Law Foundation of Silicon Valley; Legal Services for Prisoners with Children; National Center for Youth Law; National Juvenile Justice Network; National Religious Campaign Against Torture; Pacific Juvenile Defender Center; Resource Development Associates; T’ruah: The Rabbinic Call for Human Rights; Santa Cruz-Statewide Coordinated Actions To End Solitary Confinement ; Women’s Foundation of California; W. Haywood Burns Institute; Youth Law Center; several individuals

Opposition: None known

PURPOSE

The purpose of this bill is to establish statutory guidelines and limits for confining a minor or ward in a juvenile facility in a locked sleeping room or cell with minimal or no contact with people other than staff and attorneys, as specified.

Existing law provides generally that the purpose of the juvenile court law “is to provide for the protection and safety of the public and each minor under the jurisdiction of the juvenile court and

to preserve and strengthen the minor's family ties whenever possible, removing the minor from the custody of his or her parents only when necessary for his or her welfare or for the safety and protection of the public. If removal of a minor is determined by the juvenile court to be necessary, reunification of the minor with his or her family shall be a primary objective. If the minor is removed from his or her own family, it is the purpose of this chapter to secure for the minor custody, care, and discipline as nearly as possible equivalent to that which should have been given by his or her parents . . . ¶ . . . Minors under the jurisdiction of the juvenile court who are in need of protective services shall receive care, treatment, and guidance consistent with their best interest and the best interest of the public. Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances . . . (Welfare and Institutions Code ("WIC") § 202.)

Existing law provides that minors under the age of 18 years may be adjudged to be a ward of the court for violating "any law of this state or of the United States or any ordinance of any city or county of this state defining crime," as specified. (WIC § 602.)

Existing law generally provides that when a minor is adjudged a ward of the court on the ground that he or she is delinquent, the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the minor, including medical treatment, subject to further order of the court, as specified. (WIC § 727(a).)

Existing law authorizes the court to place a ward of the court in a juvenile hall, ranch, camp, forestry camp, secure juvenile home, or the Division of Juvenile Facilities, as specified. (WIC § 726.)

Confinement of Detained Minors

Existing law requires the Board of State and Community Corrections ("BSCC") to "adopt minimum standards for the operation and maintenance of juvenile halls for the confinement of minors." (WIC § 210.)

Existing law requires the BSCC to "adopt and prescribe the minimum standards of construction, operation, programs of education and training, and qualifications of personnel for juvenile ranches, camps, or forestry camps . . ." (WIC § 885.)

This Bill: Proposed Statute Establishing Conditions for "Room Confinement" for Minors in Juvenile Facilities

This bill would enact a new statute regulating the conditions for "room confinement" for minors in juvenile facilities, with the following requirements and definitions:

Delayed Operational Date

This bill provides that its provisions shall become operative on January 1, 2018.

Definitions and Application

This bill would apply the following definitions to its provisions:

- “Juvenile facility” includes any of the following:
 - 1) A juvenile hall, as specified.
 - 2) A juvenile camp or ranch, as specified.
 - 3) A facility of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities.
 - 4) A regional youth educational facility, as specified.
 - 5) A youth correctional center, as specified.
 - 6) A juvenile regional facility as specified.
 - 7) Any other local or state facility used for the confinement of minors or wards.

- “Minor” means a person who is any of the following:
 - 1) A person under 18 years of age.
 - 2) A person under the maximum age of juvenile court jurisdiction who is confined in a juvenile facility.
 - 3) A person under the jurisdiction of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities.

- “Room confinement” means the placement of a minor or ward in a locked sleeping room or cell with minimal or no contact with persons other than correctional facility staff and attorneys. Room confinement does not include confinement of a minor or ward in a single-person room or cell for brief periods of locked room confinement necessary for required institutional operations.”

- “Ward” means a person who has been declared a ward of the court pursuant to subdivision (a) of Section 602.

Guidelines, Limits and Requirements for Placing and Retaining a Minor/Ward in “Room Confinement”

This bill would require that the placement of a minor or ward in room confinement be accomplished in accordance with the following guidelines:

- 1) Room confinement shall not be used before all other less-restrictive options have been attempted and exhausted.
- 2) Room confinement shall not be used for the purposes of punishment, coercion, convenience, or retaliation by staff.
- 3) Room confinement shall not be used to the extent that it compromises the mental and physical health of the minor or ward.

This bill would allow a minor to be held up to four hours in room confinement.

This bill would require that after the minor or ward has been held in room confinement for a period of four hours, staff shall do one or more of the following:

- 1) Return the minor or ward to general population.
- 2) Consult with mental health or medical staff.

- 3) Develop an individualized plan that includes the goals and objectives to be met in order to reintegrate the minor or ward to general population.

This bill would require that if room confinement must be extended beyond four hours, staff shall do the following:

- 1) Document the reason for room confinement and the basis for the extension, the date and time the minor or ward was first placed in room confinement, and when he or she is eventually released from room confinement.
- 2) Develop an individualized plan that includes the goals and objectives to be met in order to reintegrate the minor or ward to general population.
- 3) Obtain written authorization by the facility superintendent or the Director of Juvenile Justice or his or her designee every four hours thereafter.

Limitations

This bill states that these provisions are “not intended to limit the use of single-person rooms or cells for the housing of minors or wards in juvenile facilities and does not apply to normal sleeping hours.”

This bill states that its provisions do “not apply to minors or wards in court holding facilities or adult facilities.”

This bill states that nothing in its provisions “shall be construed to conflict with any law providing greater or additional protections to minors or wards.”

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:

This bill seeks to limit the use of room confinement in California's juvenile facilities by providing a standard definition and specific guidelines around its use. The bill requires juvenile facilities to attempt and exhaust less restrictive options before using room confinement. Room confinement cannot be used to the extent it compromises the mental or physical health of the youth and it cannot be used for the purposes of punishment, retaliation, coercion or convenience by staff. Room confinement lasting beyond four hours requires a sign off by the facility superintendent and every four hours thereafter, documentation, and an individualized plan to reintegrate the youth back into general population.

Long-term isolation has not been shown to have any rehabilitative or treatment value, and the United Nations has called upon all member countries to ban its use completely on minors. It is a practice that endangers mental health and increases risk of suicide, and is often used as a method to control a correctional environment, and not for any rehabilitative purpose. It does not properly address disciplinary issues and more often, it increases these behaviors in youth, especially those with mental health conditions. In 1999, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) released a study of juvenile facilities across the country which found that 50% of youth who committed suicide were in isolation at the time of their suicide. Further, 62% of the suicide victims had a

history of isolation. In a report released by the California Department of Corrections and Rehabilitation in 2012, prisoners who had spent time in isolation in the Security Housing Units had a higher rate of recidivism than those who had not. This bill recognizes the importance of keeping youth in the classroom, in counseling, in programs, and other pro-social activities—all of which will lead to reductions in recidivism.

Title 15 regulations do not provide specific guidelines around the use of room confinement, oftentimes used interchangeably with terms like “separation.” Title 15 charges facility administrators to develop written policies and procedures regarding the use of separation, but does not provide additional guidance or limitations except that “separated youth shall not be denied normal privileges at the facility, except when necessary to accomplish the objectives of separation.” Current regulations and statutes do not prevent isolation that can last 21 hours or more each day.

The use of long-term isolation is clearly documented in both state and local juvenile facilities. Despite a longstanding consent decree in effect since 2004, an internal CDCR audit found continuing abuses in the Division of Juvenile Facilities as late as 2011, including youth locked up in their cells for more than 23 hours a day. Additionally, in a recent 2014 report released by Barry Krisberg of the Warren Institute at UC Berkeley, youth in the most restrictive current program at DJJ known as the “Behavior Treatment Program,” were required to receive only 3 hours outside of their cell, and were typically there for approximately 60 days. Despite some improvements in state conditions since the 2011 audit, the consent decree has since been lifted earlier this year, and it is critical that statutory definitions and parameters on the use of room confinement that is consistent for all juvenile facilities be established going forward. At the local level, there are even fewer guidelines and limitations. A federal class-action lawsuit filed against Contra Costa’s juvenile hall for youth with disabilities who were placed in long term isolation and denied education as a punishment was recently settled by the county, and the conditions of the settlement are nearly identical to SB 1143, clearly demonstrating that the parameters established in the bill can be implemented at the county level. There simply must be a statewide standard defining room confinement, and limiting its duration so that youth are in the classroom and other rehabilitative programming. This bill will lead to better rehabilitative outcomes for youth, a safer correctional environment for staff and youth, and the avoidance of costly lawsuits.

2. What This Bill Would Do

As explained in detail above, this bill would establish statutory guidelines and limits for confining a minor or ward in a juvenile facility in a locked sleeping room or cell with minimal or no contact with people other than staff and attorneys. The bill specifies that this kind of confinement shall be used only as a last resort, and not be used for punishment, coercion, convenience or retaliation by staff, or if it compromises the mental and physical health of the minor or ward. The bill requires specified measures where a minor or ward has been confined for four hours, and where continuing room confinement beyond four hours is necessary.

The bill's provisions would not become operational until January 1, 2018.

3. Background

Confining minors in detention facilities to locked rooms or cells is an issue this Committee has considered on several occasions in the past, including on measures carried by the author of this bill. Many commentators have written about the adverse effects of "solitary confinement" on both minors and adults in custodial facilities. For example, last year a law review article stated in part:

Although there is limited research on the effects of isolation on incarcerated youth, the existing studies have found that it is correlated with high rates of suicide as well as with post-traumatic stress disorder ("PTSD"), depression, and future criminal activity. . . . Of course, its harmful impact on adult prisoners has been well established in the scholarly literature. . . .

¶

. . . When considering the impact of isolation on incarcerated youth, it is critical to keep in mind that this cohort is already psychologically compromised when compared to the general teenage population. Rates of mental health disorders are higher among these adolescents, with studies finding that up to seventy percent of incarcerated adolescents satisfy the criteria for one mental health disorder and many of them suffer from multiple disorders. In turn, certain groups of people with mental illness, including males and those of lower socioeconomic status, are at increased risk of abusing drugs such as marijuana, opiates, cocaine and other stimulants, and alcohol. In addition, both drug abuse and mental illness often begin "in adolescence or even childhood, periods when the brain is undergoing dramatic developmental changes." In fact, early exposure to abused substances "can change the brain in ways that increase the risk of mental illness, just as early symptoms of mental illness can increase one's vulnerability to drug abuse." As a result, the psychological harm caused by the solitary confinement of young people in juvenile and criminal justice settings can exacerbate preexisting mental illness and increase the likelihood of subsequent drug abuse. . . . ¶

. . . In the case of child prisoners, one of the few existing studies is a 2012 report by Human Rights Watch based on interviews and correspondence with 127 individuals detained in U.S. jails or prisons while under the age of eighteen; it concluded that solitary confinement "can cause serious physical harm to youth." . . . ¶

. . . Young people in solitary confinement experience a wide range of social and developmental harms as a result of being isolated in penal settings. As with increased rates of mental illness, young people often enter the juvenile justice system with a prior history of trauma and victimization, with research showing that up to forty-two percent of juvenile justice-involved youth also report involvement with child protective services as victims of abuse and neglect. In addition, disproportionate numbers of youth in juvenile detention and correctional

facilities have special needs, with one recent federal study showing thirty percent have learning disabilities and forty-five percent have attention deficit problems. Thus, for these children with preexisting disabilities or histories of trauma, the developmental harm of solitary confinement can be significantly exacerbated, as isolation itself can be re-traumatizing.

Further, children in isolation are denied contact with their families as well as access to education, vocational training, and other forms of rehabilitation, including drug and alcohol treatment. Recent empirical data on incarcerated youth have demonstrated that visits from family members correlate with improved behavior and school performance. Providing adolescents with opportunities for skill acquisition (gained through educational, vocational, or other training) is necessary for the development of "mastery," just as nurturing by caring adults and opportunities for self-expression are crucial for the development of "identity" (developing a stable definition of themselves and their outlook on life - both of which are critical stages of adolescent psychosocial development). For children in isolation, the denial of these basic needs - access to family, education, and treatment - decreases the likelihood that they will be able to successfully reintegrate into the community upon their release from detention.¹

4. Current Regulations

As noted above, current statute requires the BSCC to promulgate regulations establishing minimum standards in juvenile halls. Current regulations pertaining to the segregation of confined minors provide:

The facility administrator shall develop written policies and procedures concerning the need to segregate minors. Minors who are segregated shall not be denied normal privileges available at the facility, except when necessary to accomplish the objectives of segregation. Written procedures shall be developed which provide a review of all minors to determine whether it is appropriate for them to remain in segregation and for direct visual observation. When segregation is for the purpose of discipline, Title 15, Section 1390 shall apply.²

Current regulations further provide:

The facility administrator shall develop written policies and procedures for the discipline of minors that shall promote acceptable behavior. Discipline shall be imposed at the least restrictive level which promotes the desired behavior. Discipline shall not include corporal punishment, group punishment, physical or psychological degradation or deprivation of the following:

- (a) bed and bedding;
- (b) daily shower, access to drinking fountain, toilet and personal hygiene items, and clean clothing;
- (c) full nutrition;

¹ Birckhead, *Children In Isolation: The Solitary Confinement Of Youth* (Spring 2015) 50 Wake Forest L. Rev. 1 (citations omitted).

² 15 CCR § 1354.

- (d) contact with parent or attorney;
- (e) exercise;
- (f) medical services and counseling;
- (g) religious services;
- (h) clean and sanitary living conditions;
- (i) the right to send and receive mail; and,
- (j) education.

The facility administrator shall establish rules of conduct and disciplinary penalties to guide the conduct of minors. Such rules and penalties shall include both major violations and minor violations, be stated simply and affirmatively, and be made available to all minors. Provision shall be made to provide the information to minors who are impaired, illiterate or do not speak English.³

-- END --

³ 15 CCR 1390.