
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 1330 **Hearing Date:** April 19, 2016
Author: Galgiani
Version: March 28, 2016
Urgency: No **Fiscal:** No
Consultant: ML

Subject: *Missing Persons*

HISTORY

Source: UDW/AFSCME Local 3930

Prior Legislation: SB 11 (Beall) – Chaptered 468, Stats. 2015
SB 29 (Beall) – Chaptered 469, Stats. 2015

Support: Unknown

Opposition: None known

PURPOSE

The purpose of this bill is to expand the current definition of “mentally impaired,” which is one of the criteria of an “at-risk” missing person, to also include “cognitively impaired or developmentally disabled” individuals.

Existing law authorizes the Attorney General to establish and maintain the Violent Crime Information Center, which combines existing state, federal, and civilian databases into a single comprehensive network to assist in the identification and apprehension of missing individuals, particularly children and at-risk adults. (Penal Code §§14200-14201.)

Existing law authorizes the Attorney General to distribute a missing children and at-risk adults bulletin on a quarterly basis to local law enforcement agencies, district attorneys, and public schools. (Penal Code §14204.)

Existing law authorizes the Attorney General to establish and maintain an online missing person registry and also a separate and confidential database of missing children and at-risk adults for statistical and research purposes. (Penal Code §14205(d).)

Existing law authorizes the Department of Justice to operate a statewide, toll-free telephone hotline 24 hours per day, seven days per week to receive information regarding missing children and at-risk adults and to relay this information to the appropriate authorities. (Penal Code §14210.)

Existing law requires police and sheriff's departments to immediately report and assess missing person cases using checklists and guidelines to locate a missing person and that if the missing person is under 21 years of age or at risk, to broadcast a "Be On the Lookout" bulletin without delay, within its jurisdiction. (Penal Code §14211(c), (d).)

Existing law defines a "missing person" to include any of the following: 1) An at-risk adult; 2) A child who was taken, detained, concealed, enticed away, or retained by a parent illegally; 3) A child who is missing voluntarily or involuntarily or under circumstances not conforming to his or her ordinary habits or behavior and who may be need of assistance. (Penal Code §14215(a).)

Existing law defines an "at-risk" individual to be any of the following: a victim of a crime or foul play; in need of medical attention; has no pattern of running away or disappearing; may be a victim of parental abduction; or mentally impaired. (Penal Code §14215(b).)

This bill clarifies that an at-risk individual who is mentally impaired can include "a person who is cognitively impaired or developmentally disabled."

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. Need for This Bill

According to the author:

The Silver Alert was signed into California law in 2012 to help in the recovery of missing persons who are 65 years of age and older. It was recently amended to include those who have a developmental or mental disability or cognitive impairment.

There are more than 250,000 people living with developmental disabilities in California. Roughly 1 in 20 adults suffer from a severe mental illness, and many of these individuals are at great risk of wandering at some point in their lives. Recently, there have been efforts to educate and train those in law enforcement who come into contact with these individuals on how to interact and de-escalate a situation with the least amount of force, most recently with the passing of SB 29 and SB 11 in 2015.

Senate Bill 1330 will clarify that a "Be On The Lookout" bulletin should be issued when a missing person is cognitively impaired or developmentally disabled. By updating the "Be On The Lookout" bulletin provisions to conform to the Silver Alert provisions, California will be taking another step towards helping individuals with a developmental disability or cognitive impairment live in safe communities.

2. Background

There are many protocols that apply to individuals who are "at-risk" and missing. For instance, existing law establishes that any "at-risk" and missing individuals' information will be in the Attorney General's quarterly bulletin to local law enforcement agencies, district attorneys, and public schools and will be in the AG's confidential database for missing children and at-risk adults created for statistical and research purposes. Current law also dedicates a statewide, toll-free 24/7 telephone hotline to receive information to help locate missing children and at-risk adults and to relay this information to the appropriate authorities and also requires police and sheriff's departments to immediately report and assess missing person cases and that if the missing person is under 21 years of age or at risk, to broadcast them a "Be On the Lookout" bulletin without delay, within its jurisdiction. The bill clarifies that a mentally impaired person,

who is generally defined as “at-risk” if missing, also includes a “cognitively impaired or developmentally disabled” individual, which will help ensure that current law also applies to help locate missing, at-risk individuals with cognitive or developmental disabilities.

There can be an overlap in defining developmental and cognitive disabilities. "Developmental" and "cognitive" are very broad labels, and do not particularly indicate the level of skill or ability that an individual may have." Developmental disability" is a legal umbrella term that refers to disabilities present before an individual reaches age 22. Congenital developmental disabilities exist at birth, but developmental disabilities can also be acquired post birth. Examples of developmental disabilities are: Cerebral palsy, epilepsy, autism, hearing loss, Down syndrome, mental retardation, spinal injury and brain injury. Though not all of these disabilities necessarily result in decreased intellectual functioning, often people use the term to refer to disabilities that have a component affecting cognitive function. “Cognitive disabilities" generally refers to any disability affecting mental processes, and examples include mental retardation, attention-deficit hyperactivity disorder (ADHD), dyslexia, aphasia, brain injury, language delay and learning disabilities.¹

In 2015, there were 83,144 reported cases of children who went missing in California and of them 45,647 were female and 37,497 were male children.² It is unknown from the data how many of these children were cognitively impaired or developmentally disabled at the time that they went missing. In 2015, there were 40,823 reported cases of missing adults. From the total amount of adults who went missing, 23,958 were male and 16,865 were female adults. Of these cases, there were 1,943 “dependent adults,” which was defined as “any adult who has physical or mental limitations that restrict his or her ability to carry out normal activities.”³

The number of active missing person cases in California averages around 25,000 individuals and currently, there are over 3,000 reports of unidentified individuals (including homicide victims) in the California Attorney General’s database.⁴ There is no waiting period to report a missing person and the police and sheriff’s departments across California must accept any report, whether it is made by telephone of missing persons and runaways, immediately and give priority to handling such reports. Law enforcement officers regularly highlight missing individuals on the website either in the Featured Missing Children and Adult Cases Section or through the Missing Person Bulletin. In order to add photographs of a missing person on the website, family members must submit the photo of the missing person to their local law enforcement agency through a missing person’s report.

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¹ <http://www.serviceandinclusion.org/index.php?page=developmental>

² <https://oag.ca.gov/sites/all/files/agweb/pdfs/missing/children/children-2015-annual-reports.pdf?>

³ <https://oag.ca.gov/sites/all/files/agweb/pdfs/missing/adults/adult-2015-annual-reports.pdf?>

⁴ <https://oag.ca.gov/missing>