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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** SB 625                      **Hearing Date:** April 4, 2017  
**Author:** Atkins  
**Version:** February 17, 2017  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SJ

**Subject:** *Juveniles: Honorable Discharge*

### HISTORY

**Source:** Conference of California Bar Associations

**Prior Legislation:** SB 843 (Committee on Budget and Fiscal Review), Ch. 33, Stats. 2016  
AB 1843 (Stone), Ch. 686, Stats. 2016  
AB 2390 (Brown) 2016 – Not heard, Senate Public Safety  
SB 1021 (Committee on Budget and Fiscal Review), Ch. 41, Stats. 2012  
AB 1628 (Committee on Budget), Ch. 729, Stats. 2010

**Support:** Anti-Recidivism Coalition; Commonweal Juvenile Justice Program

**Opposition:** None known

### PURPOSE

*The purpose of this bill is to establish a mechanism for honorable discharges for persons discharged from the Division of Juvenile Justice, as specified.*

#### **DJJ Discharge and Subsequent Supervision**

*Existing law* authorizes the commitment of a minor adjudged a ward of the juvenile court to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities (DJJ), as specified. (Welf. and Inst. Code § 731.)

*Existing law* authorizes the Board of Juvenile Hearings to do the following:

- (1) Set a date on which the ward shall be discharged from the jurisdiction of DJJ and permitted his or her liberty under supervision of probation and subject to the jurisdiction of the committing court, as specified.
- (2) Deny discharge, with specified exceptions. (Welf. and Inst. Code § 1766 (a).)

*Existing law* provides that if the Board of Juvenile Hearings determines that a ward is ready for discharge to county supervision, the board shall set a date for discharge from the jurisdiction of DJJ no less than 14 days after the date of such determination. The board is required to record any postrelease recommendations for the ward, which are sent to the committing court responsible for setting the ward's conditions of supervision no later than seven days from the date of such determination. (Welf. and Inst. Code § 1766(b)(5).)

*Existing law* requires the committing court to convene a reentry disposition hearing for a ward once DJJ has delivered the ward to the custody of the probation department of the committing county, as specified. (Welf. and Inst. Code § 1766(b)(6).)

*Existing law* provides that the county of commitment supervise the reentry of any ward still subject to the court's jurisdiction and discharged from the jurisdiction of DJJ. The conditions of the ward's supervision are established by the court, as specified. (Welf. and Inst. Code § 1766(b)(1).)

*Existing law* provides that the California Department of Corrections and Rehabilitation (CDCR) has no further jurisdiction over a ward who is discharged by the board. (Welf. and Inst. Code § 1766(b)(7).)

*This bill* provides that the CDCR has no further jurisdiction over a ward who is discharged by the board, except to determine if a youth previously committed to the CDCR, Division of Juvenile Facilities is eligible for an honorable discharge.

### **Honorable Discharge**

*Existing law* provides that when a person is discharged from DJJ and "has proved his or her ability for honorable self-support, the Youth Authority Board shall give him or her honorable discharge. Any person on parole who violates the conditions of his or her parole may be returned to the Youth Authority." (Welf. and Inst. Code § 1177.)

*This bill* would eliminate the provision regarding parole violations.

*Existing law* provides that DJJ "may grant honorable discharge to any person committed to or confined in any such school. The reason for that discharge shall be entered in the records." (Welf. and Inst. Code § 1178.)

*This bill* revises this section to state "any person *previously* committed" to DJJ.

*Existing law* provides that all persons honorably discharged from DJJ are "released from all penalties or disabilities resulting from the offenses for which they were committed, including, but not limited to, any disqualification for any employment or occupational license, or both, created by any other provision of law. However, that a person shall not be eligible for appointment as a peace officer employed by any public agency if his or her appointment would otherwise be prohibited," as specified. (Welf. and Inst. Code § 1179(a).)

*Existing law* provides that a person may be appointed and employed as a peace officer by DJJ "if (1) at least five years have passed since his or her honorable discharge, and the person has had no misdemeanor or felony convictions except for traffic misdemeanors since he or she was honorably discharged by the board, or (2) the person was employed as a peace officer by the department on or before January 1, 1983. No person who is under the jurisdiction of the department shall be admitted to an examination for a peace officer position with the department unless and until the person has been honorably discharged from the jurisdiction of the department by the Youth Authority Board." (Welf. and Inst. Code § 1179(b).)

*Existing law* provides that “upon the final discharge or dismissal of any such person, [DJJ] shall immediately certify the discharge or dismissal in writing, and shall transmit the certificate to the court by which the person was committed. The court shall thereupon dismiss the accusation and the action pending against that person.” (Welf. and Inst. Code § 1179(c).)

*Existing law* provides that except as specified, every person honorably discharged from DJJ who has not, during the period of control by DJJ, been placed by DJJ in a state prison “shall thereafter be released from all penalties and disabilities resulting from the offense or crime for which he or she was committed, and every person discharged may petition the court which committed him or her, and the court may upon that petition set aside the verdict of guilty and dismiss the accusation or information against the petitioner who shall thereafter be released from all penalties and disabilities resulting from the offense or crime for which he or she was committed, including, but not limited to, any disqualification for any employment or occupational license, or both, created by any other provision of law.” (Welf. and Inst. Code § 1772(a).)

*Existing law* further provides that a person subject to this section “shall not be eligible for appointment as a peace officer employed by any public agency if his or her appointment would otherwise be prohibited . . . . However, that person may be appointed and employed as a peace officer by the Department of the Youth Authority if (A) at least five years have passed since his or her honorable discharge, and the person has had no misdemeanor or felony convictions except for traffic misdemeanors since he or she was honorably discharged by the Youth Authority Board, or (B) the person was employed as a peace officer by the Department of the Youth Authority on or before January 1, 1983. No person who is under the jurisdiction of the Department of the Youth Authority shall be admitted to an examination for a peace officer position with the department unless and until the person has been honorably discharged from the jurisdiction of the Youth Authority Board.” (Welf. and Inst. Code § 1772(b).)

*Existing law* provides that the Board of Juvenile Hearings has the following powers and duties: discharges of commitment, orders for discharge from the jurisdiction of the Division of Juvenile Facilities to the jurisdiction of the committing court, initial case reviews, and annual reviews. (Welf. and Inst. Code § 1719(a).)

*This bill* provides that the honorable discharge determination is conducted by the Board of Juvenile Hearings upon termination of the jurisdiction of the committing court.

*Existing law* provides that the Division of Juvenile Facilities has the following powers and duties: return of persons to the court of commitment for redispotion by the court or a reentry disposition, determination of offense category, setting of discharge consideration dates, developing and updating individualized treatment plans, institution placements, furlough placements, return of nonresident persons to the jurisdiction of the state of legal residence, disciplinary decision-making, and referrals pursuant to Section 1800. (Welf. and Inst. Code § 1719(c).)

*This bill* authorizes DJJ to conduct honorable discharge determinations for youth previously committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities.

*This bill* makes other additional conforming changes to reflect institutional name changes and the role of county probation in supervising individuals released from DJJ custody.

## COMMENTS

### 1. Need for This Bill

According to the author:

Prior to 2011, Welfare and Institutions Code §§1772 and 1179 established an “honorable discharge” program which enabled juvenile offenders who successfully completed parole after custody and demonstrated an “ability for honorable self-support” to clear their records and qualify for employment or licensure. This program was regarded as a valuable anti-recidivism tool and incentive to keep youth crime-free while on probation.

However, the Legislature enacted AB 1628 of 2010, the Corrections Budget Trailer Bill, which established “Juvenile Parole Realignment,” shifting responsibility for the supervision of offenders released from state juvenile facilities from the state Juvenile Parole Board to county probation departments. Although the bill made no changes to the statutory language relating to honorable discharges, and no mention was made in any analysis, the amended law failed to authorize anyone at the local level to issue honorable discharges, thereby effectively eliminating the program.

Courts that have confronted the issue have acknowledged that the removal of this authority was inadvertent, but have stated that the problem must be fixed by corrective statutory amendment (*See In re J.S.* (2015) 237 Cal.App.4th 452.)

The inability to earn an honorable discharge means these youths’ criminal record stays with them, disqualifying them from employment opportunities and occupational licensing requirements. Without honorable discharge status, the record of even rehabilitated youth will follow them as they try to successfully navigate in the outside world.

DJJ Reentry Youth who are unable to earn an honorable discharge may face barriers obtaining employment and/or CA State Licensing in Barbering and Cosmetology, Contractors, DJJ Corrections Officer, Group Home Employee, Lawyer, Tattoo Shop/Artist Agency, Teacher, Counselor. For example, if a youth wants to be a barber, the CA State Licensing Board of Barbering and Cosmetology requests details of the crime, explanation of the crime and incarceration dates, regardless of when the offense was committed. The licensing board, like other CA boards, asks for convictions only but youth are usually not savvy enough to realize they don’t need to reveal juvenile offenses as authorized in Bus. & Prof. Code §461. Information youth then provide is reviewed by a licensing board that is not trained, as is the Board of Juvenile Hearings, in adolescent risk-taking, impulsivity, peer influences and brain development.

Even though juveniles are not “convicted” and are authorized not to disclose their offenses, this information may be revealed in interviews, references, or records checks, and an honorable discharge will show rehabilitation.

DJJ Reentry Youth who are unable to earn an honorable discharge face barriers higher education and may be precluded from College Admissions. For example, if you apply to a private college, the school can review your information obtained through record checks. (Ed. Code §44237.)

DJJ Reentry Youth who are unable to earn an honorable discharge may face barriers in housing applications/rental agreements, Section 8 exclusions, and local housing opportunities. (Fin. Code, §550, 42 § U.S.C. 13661, 24 C.F.R. §§5.850, 24 C.F.R. §§5.885 and 982.553(a)(2)(ii)(2).)

An honorable discharge is not a record sealing. It can be used as a prior conviction, a strike. Juvenile offenses and arrests often turn up in record checks. Honorable Discharge will not prevent that from occurring, but youth who have been granted an Honorable Discharge will then be able to explain that a trained board of professionals determined that s/he shall not to be subject to penalties or disabilities associated with the crime and can be offered as a sign of rehabilitation. Employers will see this as a reason to give a second chance.

Additionally, there are immigration collateral consequences for DJJ reentry youth who are undocumented, legal residents, or here on a visa. (8 U.S.C. §1227(a)(2)). For example, cancellation of removal is a highly discretionary form of relief, and, if faced, an honorable discharge may improve one's chances in immigration proceedings. And, if deported, youth who return to their home country may be prevented from licensing there without an ability to earn an honorable discharge.

This program has the potential to be an excellent anti-recidivism tool, with juvenile offenders given the opportunity to completely reform and redeem themselves in light of the law, their reputation, and their identity.

## **2. Honorable Discharge**

In 2007, the jurisdiction of the DJJ—formerly the California Youth Authority, now technically the Department of Corrections and Rehabilitation, Division of Juvenile Facilities—was narrowed to allow DJJ commitment only for delinquent wards of the court who had been found to have committed a serious or violent offense, as specified. As part of the broader juvenile justice “realignment” in California that has occurred over the past several years, county probation departments now supervise wards of the juvenile court upon their release from DJJ. A ward discharged from DJJ is no longer subject to the jurisdiction of DJJ or CDCR. The county of commitment is required to supervise the reentry of any ward who has been discharged from the jurisdiction of DJJ and is subject to the court's jurisdiction. The conditions of the ward's supervision are established by the court.

Prior to juvenile realignment, the Board of Parole Hearings (and before that, the Youthful Offender Parole Board) retained jurisdiction over a ward released from a DJJ institution during the period of parole. DJJ parole agents supervised the ward's parole in the community.

The honorable discharge provisions that are the subject of this bill operated at a time when DJJ retained jurisdiction over a ward during both custody and parole. With the passage of AB 1628 in 2010, the jurisdiction and supervision responsibilities for wards being released from DJJ passed from the state to the counties and the courts.

None of the measures enacting or revising juvenile realignment amended the DJJ honorable discharge statutes. Most of these provisions remain intact in the code, unchanged since 2004. As explained above, this bill revises these provisions to specify that the Board of Juvenile Hearings is responsible for granting honorable discharges, these determinations occur upon the termination of the committing court's jurisdiction, and the Department of Rehabilitation and Corrections retains jurisdiction over a ward who has been discharged for the sole purpose of making the honorable discharge determination. This bill makes other revisions to these code sections to reflect the role of county probation in the supervision of people discharged from DJJ's custody.

The application of the DJJ honorable discharge provisions in statute was considered by an appellate court decision issued in June of 2015. In *In re J.S.*, (2015) 237 Cal.App.4th 452, a DJJ ward was released after the enactment of AB 1628 in 2010. As a result, the ward was supervised by local probation instead of DJJ parole. The court explained, "the Board of Parole Hearings (Board) did not, as they had been required to in the past, make a finding upon release as to whether his discharge from parole was honorable or otherwise." The ward petitioned the trial court to make the honorable discharge finding in the place of DJJ, and the court of appeal affirmed the trial court's denial of the petition, noting its (the appellate court's) conclusion that "the Legislature should amend the statutory scheme to be consistent with Realignment . . . ."

*In re J.S.* lays out the issue this bill attempts to address:

Prior to Realignment, once a youth completed his commitment at the DJJ and parole period, the Board determined his eligibility for discharge. As part of this determination, the Board was required to give the youth an honorable discharge where the Board found that the "person so paroled has proved his or her ability for honorable self-support." Otherwise, the Board could award a general or dishonorable discharge. If honorably discharged, a youth was automatically entitled to release from all penalties and disabilities resulting from the offense or crime for which he was committed. . . . (W)hether honorably discharged, generally discharged or dishonorably discharged, any youth can also petition the juvenile court to set aside the verdict of guilty and dismiss the accusation or information against the youth, and thereafter the youth would be eligible for release from all penalties and disabilities.

. . .

. . . . Because DJJ-administered parole no longer exists, the Board cannot make an honorable discharge determination prior to release, as mandated by section 1177.

The Legislature did not repeal or amend section 1177 to make it consistent with the new local procedures. Under the law as currently written, there is no other entity authorized to make the honorable discharge finding. The Legislature, in enacting Realignment, neither set up another mechanism for determining eligibility for honorable discharge, nor did it amend section 1772, subdivision (a) to remove the automatic relief provision in the statute based on such a finding. Currently, therefore, the automatic provision of section 1772, subdivision (a), which is triggered by an honorable discharge finding under section 1177, is de facto inoperable. Appellant is correct that this appears to be an oversight by the Legislature.

...

Even if we were inclined to intervene, we cannot presume to know how the Legislature would harmonize these statutes. In correcting this inconsistency, the Legislature could do a number of things. It could transfer the authority to make the honorable discharge finding to the trial court as appellant suggests, or it could choose to eliminate the entire concept of honorable discharge, eliminating along with it the automatic relief portion of section 1772, subdivision (a). (*In re J.S.*, *supra*, (citations omitted).)

### 3. Considerations

Members may wish to consider the following as they relate to the honorable discharge determination process:

- Should the honorable discharge process occur automatically upon termination of the committing court?
- Should the sections addressing honorable discharge specify the criteria that the Board of Juvenile Hearings should consider when making these determinations?
- Should these decisions be made administratively?
- What role, if any, would the county probation departments play in these decisions?

### 4. Argument in Support

The Anti-Recidivism Coalition strongly supports this bill stating:

SB 625 aims to remove significant barriers to successful re-entry from the lives of those honorably discharged from The Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ) by releasing them from all penalties or disabilities resulting from the offenses for which they were committed. This bill is in keeping with “ban the box” efforts proliferating around the country, and would remove all collateral consequences flowing from a juvenile conviction, including crucial disqualifications from employment, licensing, and housing opportunities.

Overwhelmingly, ex-offenders have tenuous relationships to the labor market. Approximately 70% have dropped out of high school, contributing to their unemployability. Moreover, time spent incarcerated can make the matter worse by depriving those incarcerated the chance to develop the job skills and social capital necessary for success in the labor market later in life. These existing barriers to employment and successful reintegration are further exacerbated by existing policies that automatically disqualify ex-offenders from pursuing certain positions, acquiring licenses and even obtain stable housing.

SB 625 removes these obstacles. With these obstacles removed, ARC members and many other Californians will be able to qualify for a larger number of the type of meaningful job opportunities that we know help drive down recidivism rates.