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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** SB 941                      **Hearing Date:** April 19, 2016  
**Author:** Mitchell  
**Version:** April 6, 2016  
**Urgency:** No                              **Fiscal:** Yes  
**Consultant:** AA

**Subject:** *Juvenile Justice: Financial Liability for Fees and Costs*

### HISTORY

**Source:** Western Center on Law and Poverty

**Prior Legislation:** SB 504 (Lara) – Ch. 388, Stats. 2015

**Support:** American Civil Liberties Union; Aspiranet; California Coalition for Youth; Children’s Defense Fund; California Attorneys for Criminal Justice; California Immigrant Policy Center; California Public Defenders Association; Californians United for a Responsible Budget; Center of Juvenile and Criminal Justice; Children Now; Contra Costa County Public Defender; Public Defender of Humboldt County; Courage Campaign; District Attorney for the City and County of San Francisco; Ella Baker Center for Human Rights; Fresh Lifelines for Youth; Juvenile Court Judges of California; Juvenile Law Center; Lawyers’ Committee for Civil Rights of the San Francisco Bay Area; Legal Services for Prisoners with Children; National Juvenile Defender Center; A New Way of Life Reentry Project; Pacific Juvenile Defender Center; Prison Law Office; Root & Rebound; San Francisco Public Defender; Silicon Valley De-Bug; Southern Poverty Law Center; Youth Justice Coalition; Youth Law Center

**Opposition:** None known

### PURPOSE

*The purpose of this bill is to eliminate a number of fiscal liabilities to parents, guardians and minors for costs associated with a minor’s involvement in the juvenile justice system and, in some instances, comparable costs for convicted young adults under the age of 21 , as specified.*

#### **Family Liability Based on Juvenile Detention or Wardship**

*Current law* generally authorizes the board of supervisors for any county to designate a county officer to make financial evaluations of defendants and other persons liable for reimbursable costs under the law, as specified. (Government Code § 27750.)

*Current law* provides that the county financial evaluation officer shall make financial evaluations of parental liability<sup>1</sup> for reimbursements and other court-ordered costs relating to reasonable costs of support of the minor while the minor is placed, or detained in, or committed to, any institution, as a result of temporary detention or a delinquency court order, legal services, probation supervision, and costs for records sealing, as specified,<sup>2</sup> as directed by the board of supervisors, or as established by order of the juvenile court, and may enforce the court order as any other civil judgment, including any balance remaining unpaid after jurisdiction of the minor has terminated. (Government Code § 27765.)

*This bill* would narrow the scope of this liability for these kinds of costs to apply only to legal services rendered to the minor by an attorney pursuant to an order of the juvenile court, any cost to the county or the court of legal services rendered directly to the father, mother, or spouse, of the minor or any other person liable for the support of the minor, in a dependency proceeding by an attorney appointed pursuant to an order of the juvenile court (Welfare and Institutions Code (“WIC”) § 903.1), and, for persons age 26 and older, the cost to the county and court for any investigation related to the sealing and for the sealing of any juvenile court or arrest records, as specified. (WIC § 903.3.)

*Current law* generally provides the authority for a county financial evaluation officer to reduce, cancel or remit the costs of juvenile wardship, as described above; to investigate the financial condition of the minor and his or her relatives to determine their financial capacity to pay such charges; and to enforce a claim for reimbursement for these charges if it is learned that property or other assets subsequently were acquired, as specified. (Government Code § 27757.)

*This bill* would amend this section to delete all of its provisions except the authority to reduce, cancel or remit the costs associated with the legal and sealing costs described and cited above.

### **Liability Based on Costs for Electronic Home Detention or County Inmate Work Furlough Participation**

*Current law* authorizes sheriffs, probation officers, and directors of county departments of corrections to “offer a program under which inmates committed to a county jail or other county correctional facility or granted probation, or inmates participating in a work furlough program, may voluntarily participate or involuntarily be placed in a home detention program during their sentence in lieu of confinement in the a county jail or other county correctional facility or program under the auspices of the probation officer.” (Penal Code § 1203.016.)

*Current law* provides that the “board of supervisors may prescribe a program administrative fee to be paid by each home detention participant that shall be determined according to his or her ability to pay. Inability to pay all or a portion of the program fees shall not preclude participation in the program, and eligibility shall not be enhanced by reason of ability to pay,” as specified. (Penal Code § 1203.016(g).)

*This bill* would limit this administrative fee to adult home detention participants who are over the age of 21 years and under the jurisdiction of the criminal court.

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<sup>1</sup> Specifically, the father, mother, spouse, or other person liable for the support of a minor, the estate of that person, and the estate of the minor.

<sup>2</sup> Sections 903, 903.1, 903.2, 903.3, and 903.45 of the Welfare and Institutions Code.

*Current law* generally allows a county, upon approval by the board of supervisors, to establish a work furlough program for qualifying screened offenders, and permits the work furlough administrator to collect the inmate's earning in order to pay for the inmate's board and personal expenses, and administrative costs. (Penal Code § 1208.)

*Current law* provides that a board of supervisors which implements work furlough, electronic home detention, or parole programs, as specified, may prescribe a program administrative fee and an application fee, that together shall not exceed the pro rata cost of the program to which the person is accepted, including equipment, supervision, and other operating costs, except that with "regard to a privately operated electronic home detention program . . . the limitation, . . . (that that these fees shall not exceed the pro rata cost of the program to which the person is accepted) . . . in prescribing a program administrative fee and application fee shall not apply." (Penal Code § 1208.2(b).)

*This bill* would provide that with regard to an electronic home detention program, as specified, "whether or not the program is privately operated, any administrative fee or application fee prescribed by a board of supervisors shall only apply to adults over 21 years of age and under the jurisdiction of the criminal court."

### **Liability for the Costs of Drug Testing**

*Current law* provides that, for persons convicted of an offense involving the unlawful possession, use, sale, or other furnishing of any controlled substance, in addition to any sanctions and unless the court makes a finding that this condition would not serve the interests of justice, the court, when recommended by the probation officer, shall require as a condition of probation that the defendant submit to drug and substance abuse testing. If the defendant is so ordered "and has the financial ability to pay all or part of the costs associated with that testing, the court shall order the defendant to pay a reasonable fee, which shall not exceed the actual cost of the testing." (Penal Code § 1203.1ab.)

*This bill* would limit this provision to adults over 21 years of age and under the jurisdiction of the criminal court.

*Current law* imposes this same liability on minors found to be a delinquent ward of the court by reason of the commission of an offense involving the unlawful possession, use, sale, or other furnishing of a controlled substance. (WIC § 729.9.)

*This bill* would delete the provisions subjecting the minor to a court order to pay for any part of this testing.

### **Liability for Transporting a Minor Held in Temporary Custody**

*Current law* generally provides that a minor who is held in temporary custody in a law enforcement facility that contains a lockup for adults may be released to a parent, guardian, or responsible relative by the law enforcement agency operating the facility, or into his or her own custody, provided that a minor released into his or her own custody is furnished, upon request, with transportation to his or her home or to the place where the minor was taken into custody. (WIC § 207.2.)

*Current law* provides that a parent or guardian is liable for the reasonable costs of transporting the minor to a juvenile facility and for the costs of the minor's food, shelter, and care at the juvenile facility when the parent or guardian has actual notice the minor is scheduled for release and that the parent or guardian is asked to pick up the minor by a time certain no later than six hours from the time the minor was placed in detention; when it is "reasonably possible" for the parent or guardian to pick up the minor; and the parent or guardian refused to accept or make a reasonable effort to pick up the minor. (WIC § 207.2(b).) *Current law* imposes a \$100 cap on this liability, combined with additional, related liabilities as specified, for every 24 hour period the parent or guardian fails to make a reasonable effort to pick up the minor, as specified. (WIC § 207.2 (c).) *Current law* further limits this liability by ability to pay, as specified. (WIC § 207.2(d).)

*This bill* deletes all of the financial liability provisions of this section.

### **Liability for Legal Expenses**

*Current law* provides that the "father, mother, spouse, or other person liable for the support of a minor, the estate of that person, and the estate of the minor, shall be liable for the cost to the county or the court, whichever entity incurred the expenses, of legal services rendered to the minor by an attorney pursuant to an order of the juvenile court. The father, mother, spouse, or other person liable for the support of a minor and the estate of that person shall also be liable for any cost to the county or the court of legal services rendered directly to the father, mother, or spouse, of the minor or any other person liable for the support of the minor, in a dependency proceeding by an attorney appointed pursuant to an order of the juvenile court. The liability of those persons (in this article called relatives) and estates shall be a joint and several liability.

*Current law* provides that this liability does not apply "if a petition to declare the minor a dependent child of the court pursuant to Section 300 is dismissed at or before the jurisdictional hearing." (WIC § 903.1)

*This bill* would limit this liability to apply for any cost to the county or the court of legal services rendered directly to the father, mother, or spouse, of the minor or any other person liable for the support of the minor, in a dependency proceeding by an attorney appointed pursuant to an order of the juvenile court.

### **Conforming Amendments**

*This bill* makes conforming amendments consistent with its provisions limiting the liabilities as described above, in the following sections:

- Family notification of potential liabilities required in a petition to commence proceedings in the juvenile court to declare a child a ward or dependent of the court, (WIC §§ 332 and 656).
- Ability to pay cross-reference to a section repealed by this bill (WIC § 871).

### **Liabilities Pertaining to the Support of Wards and Dependent Children**

*Current law* states that if "it is necessary that provision be made for the expense of support and maintenance of a ward or dependent child of the juvenile court or of a minor person concerning

whom a petition has been filed . . . the order providing for the care and custody of such ward, dependent child or other minor person shall direct that the whole expense of support and maintenance of such ward, dependent child or other minor person, up to the amount of . . . \$20 per month be paid from the county treasury and may direct that an amount up to any maximum amount per month established by the board of supervisors of the county be so paid. The board of supervisors of each county is hereby authorized to establish, either generally or for individual wards or dependent children or according to classes or groups of wards or dependent children, a maximum amount which the court may order the county to pay for such support and maintenance. All orders made pursuant to the provisions of this section shall state the amounts to be so paid from the county treasury, and such amounts shall constitute legal charges against the county.

*This bill* would revise this provision to instead authorize that the order for the care and custody of the ward, dependent child or other minor direct that the whole expense of support and maintenance for the child be paid for from the county treasury.

*This bill* additionally makes a technical correction to this section.

### **CalWORKS Welfare to Work**

*Current law* generally provides statutory requirements for eligibility for an individual to participate in “family stabilization,” as specified. (WIC § 11325.24.)

*This bill* would add to this criteria that a “child in the family has been held in temporary custody in a law enforcement facility pursuant to subdivision (d) of Section 207.1.”

### **Statutes Repealed by This Bill**

*This bill* additionally repeals the following existing sections providing for liability relating to wards of the court:

- WIC section 902 (orders for additional amounts to pay the whole expense of support and maintenance of a ward, dependent child, or other minor person);
- WIC section 903 (liability for costs of support of the minor while the minor is placed, or detained in, or committed to, any institution or other place, as specified);
- WIC section 903.15 (liability for registration fee of up to \$50 for appointed legal counsel);
- WIC section 903.2 (liability for probation supervision, home supervision, or electronic supervision);
- WIC section 903.25 (food, shelter and care costs of juveniles in custody of probation or detained in juvenile facility);
- WIC section 903.4 (recovery of moneys or incurred costs for support of minors in county institution or other placed program);
- WIC section 903.45 (financial evaluation of ability to pay; subsequent petition for order to pay);
- WIC section 903.5 (voluntary placement of minor in out-of-home care);
- WIC section 903.6 (distribution of collected funds);
- WIC section 903.7 (the “Foster Children and Parent Training Fund.”) and
- WIC section 904 (determination of charges by boards of supervisors or courts).

**Outstanding Court-ordered Costs Unenforceable after January 1, 2017**

*This bill* would provide that on and after January 1, 2017, the balance of any court-ordered costs imposed pursuant to the liabilities eliminated by this bill “shall be unenforceable and uncollectable, and, on January 1, 2018, the portion of the judgment imposing those costs shall be vacated.”

*This bill* further would provide that on and after January 1, 2017, the balance of any court-ordered costs imposed pursuant Section 903.1 of the Welfare and Institutions Code that are related to the rendering of legal services to a minor by an attorney pursuant to an order of the juvenile court shall be unenforceable and uncollectable, and, on January 1, 2018, the portion of the judgment imposing those costs shall be vacated.”

**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 in part:

Current law authorizes counties to hold parents liable for many of the costs incurred in providing counsel, care and supervision to youth in the juvenile system in order to help counties recoup costs. . . .

. . . These fees are purely administrative in nature—by law, the fees are meant solely “to protect the fiscal integrity of the county.” They are not supposed to be retributive, rehabilitative or restorative. . . .

In 2015, the Policy Advocacy Clinic at Berkeley Law surveyed all 58 Chief Probation Officers in California about juvenile administrative fee practices. They received responses from 52 counties. Fees differ by jurisdiction, but 48 of 52 California counties report charging fees for detention in Juvenile Hall, 28 charge for electronic monitoring, 21 charge for probation supervision and 15 charge for drug testing; of the fixed fees, 37 of 52 counties charge for public defenders and 11 charge for investigations. . . .

Two counties—Los Angeles and San Francisco—do not assess and collect juvenile administrative fees. San Francisco has never charged fees as a matter of principle . . . . Los Angeles placed a moratorium on these fees in 2009 after negative media attention to the County’s billing and collection practices and the harm it caused to families. . . .

Charging existing fee amounts on families in various counties across the state can disrupt a family’s financial stability. For example, in Contra Costa County, a family was charged over \$4000 in fees for days that their son spent in juvenile hall despite the fact that he was later cleared of all charges against him. Upon assessment, these fees became a civil judgment against the family. . . .

Given that many families with youth in the juvenile justice system are disproportionately low-income, the harm is particularly acute when fees are ordered against these families. . . .

Additionally, youth of color are overrepresented at every stage in the criminal justice system, even when controlling for alleged criminal behavior. . . . Racially disproportionate interaction with the system leaves youth of color and their families with significantly more court-related debt. For example, in Alameda County, because African American youth are sentenced more often to probation and serve longer probation conditions than white youth, a family with an African American youth is liable for more than twice the juvenile administrative fees (\$3,438) as a family with a white youth (\$1,637). . . .

. . . Under Welfare and Institutions Code section 903.45, financial evaluation officers (FEOs) are supposed to evaluate who can afford to pay such fees and whose fees should be reduced or waived based on an inability to pay. Unfortunately, in many counties, the ability to pay determination is not conducted fairly or consistently. For example, in Alameda County, one FEO stated that she could tell whether a family was lying about their income based on the mother's handbag. In Orange County, ability to pay determinations are not based on current income; instead, the County considers the likelihood of obtaining employment and future income. In any county, the burden often appears to be on low-income families to prove their inability to pay, with FEOs exercising wide discretion . . . .

As a result of the high financial burden and a flawed ability to pay process, county policies and practices undermine family stability, and are counterproductive to the rehabilitative purpose of the juvenile system. . . .

Current juvenile administrative fee scheme also creates perverse incentives for youth and their families. A grandmother who was charged detention fees for her grandson contemplated relinquishing custody of her grandson to the county because she could not pay these fees on her income of only \$400 per month. In another instance, a youth thought of running away from home and living on the streets—becoming homeless—in the hopes that his family would be relieved of the fee burden. . . .

Research through Public Record Act requests to Alameda County, Contra Costa County, Orange County, Riverside County, Sacramento County, and Santa Clara County has also shown that counties receive minimal revenue from charging low-income families administrative fees. . . .

. . . most (families) cannot afford to pay these fees. . . . ¶ . . . (M)any counties spend nearly as much on trying to collect administrative fees from low-income families than they actually collect each year. For example, Alameda County has four staff in its Central Collections Agency at varying FTE levels who are in charge of assessing and collecting fees from families. Taking into consideration their salaries and benefits as well as other costs involved, Alameda County spends approximately \$250,000 each year to collect only \$400,000. In other words, their net financial gain each year is only about \$150,000, which is minimal in light of \$74.3 million Probation budget. . . .

## 2. What This Bill Would Do

As explained in detail above, this bill would repeal existing statutory authority to charge the families and guardians of children in the juvenile justice system for the costs of their care and supervision. The bill also has similar provisions for young adults under the age of 21. Liabilities for costs associated with a youth or young adult being in the juvenile or adult system which would be ended under this bill include:

- supervised drug testing;
- home detention or work furlough programs that are alternatives to incarceration;
- orders for out-of-home care and custody of a minor; and
- reasonable costs for transporting a minor to a juvenile facility, and food, shelter and care costs.

This bill would make any pending orders for these charges unenforceable after January 1, 2017.

## 3. Background: Data Collected

The Policy Advocacy Clinic at the U.C. Berkeley Law School, which has been studying the practice and impact of county assessment of administrative fees against families of youth who have been detained or placed on probation for the past two years, provided the Committee the following chart summarizing the fees targeted by this bill in several counties.

County	Total	Juvenile Hall (24 days)	Electronic Monitoring (33 days)	Drug Testing (8 times)	Probation Supervision (17 months)
Sacramento	\$4,895	\$18.40/day	\$24.00/day	\$20.00/test	\$206/mo.
Santa Clara	\$3,052	\$30.00/day	\$14.00/day	\$0	\$110.00/mo.
Orange	\$2,994	\$23.90/day	\$0	\$11.91/test	\$136.78/mo.
Alameda	\$2,861	\$25.29/day	\$15.00/day	\$28.68/test	\$90.00/mo.
San Diego	\$1,859	\$30.00/day	\$0	\$0	\$67.00/mo.
Contra Costa	\$1,281	\$30.00/day	\$17.00/day	\$0	\$0
Ventura	\$1,115	\$33.00/day	\$75.00 + \$7.50/day	\$0	\$0
Fresno	\$997	\$19.00/day	\$11.00/day	\$16.00/test	\$50.00 once
Riverside	\$720	\$30.00/day	\$0	\$0	\$0
Stanislaus	\$636	\$24.41/day	\$0	\$0	\$50.00 once
San Bernardino	\$492	\$20.53/day	\$0	\$0	\$0
Sonoma	\$198	\$0	\$0	\$8.20/test	\$132.30 once
Los Angeles	\$0	\$0	\$0	\$0	\$0
San Francisco	\$0	\$0	\$0	\$0	\$0

The following table, also provided by the Berkeley Law Policy Advocacy Clinic, shows the average juvenile probation conditions and fees by race in Alameda County based on a July 2013 monthly report:

<b>Race</b>	<b>Total</b>	<b>Juvenile Hall (days)</b>	<b>Electronic Monitoring (days)</b>	<b>Drug Testing</b>	<b>Supervision (months)</b>
<b>Black</b>	\$3,438	25	34	11	22
<b>Latino</b>	\$2,563	24	33	7	14
<b>Asian</b>	\$2,269	7	56	6	12
<b>White</b>	\$1,637	11	21	5	10
<b>Other</b>	\$1,192	4	31	3	6

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