
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: AB 2321 **Hearing Date:** June 28, 2022
Author: Jones-Sawyer
Version: May 19, 2022
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Juveniles: room confinement*

HISTORY

Source: Author

Prior Legislation: SB 1143 (Leno), Ch. 726, Stats. 2016
SB 124 (Leno), held in Assembly Appropriations in 2015
SB 61 (Yee), ordered to the Inactive File in 2013
SB 970 (Yee), not heard in 2014
SB 1363 (Yee), failed passage in Senate Public Safety in 2012

Support: California Catholic Conference; California Public Defenders Association; Ella Baker Center for Human Rights; Los Angeles County Probation Officers Union, AFSCME Locals 685, 1587, and 1967; Joint Council of Supervising Deputy Probation Officers, SEIU Local 721; National Association of Social Workers, California Chapter

Opposition: None known

Assembly Floor Vote: 67 - 0

PURPOSE

The purpose of this bill is to redefine the exception to room confinement in juvenile facilities for brief periods to a brief period lasting no more than two hours when necessary for institutional operations, and to ensure that minors and wards subject to room confinement are provided reasonable access to toilets at all hours, including during normal sleeping hours.

Existing law provides that the purpose of the juvenile court system is to provide for the protection and safety of the public and each minor under the jurisdiction of the juvenile court. (Welf. & Inst. Code, § 202.)

Existing law defines “juvenile facility” as juvenile hall, juvenile camp or ranch, a facility of the Division of Juvenile Justice, a regional youth educational facility, a youth correctional center, a juvenile regional facility, or any other local or state facility used for the confinement of minors or wards. (Welf. & Inst. Code, § 208.3, subd. (a).)

Existing law authorizes the court to place a ward of the court in juvenile facility, as specified. (Welf. & Inst. Code, § 726.)

Existing law provides that juvenile halls shall not be deemed to be, nor be treated as, penal institutions and that juvenile halls shall be safe and supportive homelike environments. (Welf. & Inst. Code, § 851.)

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. (Welf. & Inst. Code, § 210.)

Existing law defines “room confinement” as 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. (Welf. & Inst. Code, § 208.3, subd. (a)(3).)

Existing law provides that 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. (Welf. & Inst. Code, § 208.3, subd. (a).)

Existing law requires the placement of a minor or ward in room confinement to be accomplished in accordance with the following guidelines:

- Room confinement shall not be used before other less restrictive options have been attempted and exhausted, unless attempting those options poses a threat to the safety or security of any minor, ward, or staff;
- Room confinement shall not be used for the purposes of punishment, coercion, convenience, or retaliation by staff; and,
- Room confinement shall not be used to the extent that it compromises the mental and physical health of the minor or ward. (Welf. & Inst. Code, § 208.3, subd. (b).)

Existing law provides that a minor or ward may be held up to four hours in room confinement. Requires staff to do one or more of the following after the minor or ward has been held in room confinement for a period of four hours:

- Return the minor or ward to general population.
- Consult with mental health or medical staff.
- Develop an individualized plan that includes the goals and objectives to be met in order to reintegrate the minor or ward to general population. (Welf. & Inst. Code, § 208.3, subd. (c).)

Existing law requires staff to do the following if room confinement must be extended beyond four hours:

- 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;
- Develop an individualized plan that includes the goals and objectives to be met in order to reintegrate the minor or ward to general population; and,
- Obtain documented authorization by the facility superintendent or his or her designee every four hours thereafter. (Welf. & Inst. Code, § 208.3, subd. (d).)

Existing law provides that the restrictions on room confinement are not intended to limit the use of single-person rooms or cells for the housing of minors or wards in juvenile facilities and do not apply to normal sleeping hours. (Welf. & Inst. Code, § 208.3, subd. (e).)

Existing law provides that the restrictions on room confinement do not apply during an extraordinary, emergency circumstance that requires a significant departure from normal institutional operations, including a natural disaster or facility-wide threat that poses an imminent and substantial risk of harm to multiple staff, minors, or wards. Provides that this exception applies for the shortest amount of time needed to address the imminent and substantial risk of harm. (Welf. & Inst. Code, § 208.3, subd. (h).)

Existing law provides that the restrictions on room confinement do not apply when a minor or ward is placed in a locked cell or sleeping room to treat and protect against the spread of a communicable disease for the shortest amount of time required to reduce the risk of infection, with the written approval of a licensed physician or nurse practitioner, when the minor or ward is not required to be in an infirmary for an illness. Provides that the restrictions on room confinement do not apply when a minor or ward is placed in a locked cell or sleeping room for required extended care after medical treatment with the written approval of a licensed physician or nurse practitioner, when the minor or ward is not required to be in an infirmary for illness. (Welf. & Inst. Code, § 208.3, subd. (i).)

This bill provides that room confinement does not include confinement of a minor or ward in a locked single-person room or cell for a brief period lasting no longer, than two hours when it is necessary for required institutional operations.

This bill requires that minors and wards subject to room confinement be provided reasonable access to toilets at all hours, including during normal sleeping hours.

COMMENTS

1. Need For This Bill

According to the author:

Beginning in October 2018, the California Attorney General's Office investigated how minors in Los Angeles (LA) County's two juvenile halls, Barry J. Nidorf and Central Juvenile Halls, were being treated by staff. Following their investigation, the AG's Office discovered several critical issues, including the use of room confinement as punishment. Both solitary confinement and room confinement of minors directly violates California law, as minors can only be confined in their rooms for reasons of safety, and the reason for the use of room confinement must be documented.

In January 2021, the AG's Office publicly filed a lawsuit against LA County. The lawsuit highlighted egregious abuses the Board of State and Community Corrections (BSCC) had missed in their agency's inspections of the halls. Further, in September 2021, BSCC found both of the county's juvenile halls out of compliance, noting violations of confining minors in rooms without cause, and determined they were unsuitable for housing youth. (LA) County Probation was thus required to submit a corrective action plan within 60 days, either remediating

the violations and coming into compliance or risking the shutdown of the juvenile halls.

Following BSCC's inspection of the county's Central Juvenile Hall on February 3, 2022, there was, once again, a new finding of abusing room confinement. In a notice of noncompliance to the county's probation chief, BSCC shared that a minor, who had not tested positive for COVID-19, had been unnecessarily placed in room confinement for a period of 11 days under the pretense of "medical isolation." Even when staff were made aware of this error, the minor was still left in room confinement for nearly an additional 22 hours.

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Further worsening abuses in the juvenile halls, BSCC has been made aware of additional maltreatments, such as inadequate access to toilets. Colloquially known as the "milk carton issue," minors in the halls have shared their experiences of hoarding empty milk cartons to use for urination because their rooms did not have a toilet, and staff reportedly did not let them out of their rooms to use the restroom. Moreover, when there are no milk cartons left, the minors have reported they use their towels in order to relieve themselves, resulting in their rooms smelling of horrid odor.

AB 2321 clarifies that the "brief periods of time" minors can be confined in locked rooms or cells are no longer than two hours. Also, this bill ensures that minors and wards have access to toilets at all times, especially those who do not have a toilet in their room.

2. Existing Law Regarding Juvenile Room Confinement

SB 1143 (Leno), Chapter 726, Statutes of 2016, established statutory guidelines and limits for confining a minor or ward in a juvenile facility in a locked sleeping room or cell. Under existing law, a minor or ward may be held up to four hours in room confinement. (Welf. & Inst. Code, § 208.3, subd. (c).) After the minor or ward has been held in room confinement for a period of four hours, staff are required to return the minor or ward to general population, consult with mental health or medical staff, or develop an individualized plan that includes the goals and objectives to be met in order to reintegrate the minor or ward to general population. (*Id.*) If room confinement must be extended beyond four hours, staff is required to 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; develop an individualized plan that includes the goals and objectives to be met in order to reintegrate the minor or ward to general population; and obtain documented authorization by the facility superintendent or his or her designee every four hours thereafter. (Welf. & Inst. Code, § 208.3, subd. (d).)

Existing law additionally provides that room confinement cannot be used before other less restrictive options have been attempted and exhausted, unless those options pose a threat to the safety or security of any minor, ward, or staff; cannot be used for the purposes of punishment, coercion, convenience, or retaliation by staff; and, cannot be used to the extent that it compromises the mental and physical health of the minor or ward. (Welf. & Inst. Code, § 208.3, subd. (b).)

Existing law provides that 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. (Welf. & Inst. Code, 208.3, subd. (a)(3).) These rules also do not apply to normal sleeping hours, during emergency circumstances that require a significant departure from normal institutional operations, including a threat that poses an imminent and substantial risk of harm to multiple staff, minors, or wards, or when required for extended care for medical treatment. (Welf. & Inst. Code, 208.3, subds. (e), (h), (i).)

3. Existing Regulations Regarding the Use of Room Confinement and Separation

Title 15 of the California Code of Regulations contains the minimum standards that apply to juvenile facilities and does not provide specific guidelines regarding the use of room confinement.

Room Confinement

Section 1354.5 requires the facility administrator to develop and implement written policies and procedures addressing the confinement of youth in their room that are consistent with state law. (Cal. Code Regs., tit. 15, § 1354.5.) The regulations on room confinement mirror Welfare and Institutions Code section 208.3 and provide no further guidelines or limitations.

Separation

Title 15 requires facility administrators to develop written policies and procedures regarding the use of separation that address separation of youth for reasons that include, but are not be limited to, medical and mental health conditions, assaultive behavior, disciplinary consequences and protective custody and consideration of positive youth development and trauma-informed care. (Cal. Code Regs., tit. 15, § 1354.) Section 1354 prohibits separated youth from being denied normal privileges available at the facility, except when necessary to accomplish the objective of separation. (*Ibid.*) The policies and procedures are required to ensure a daily review of separated youth to determine if separation remains necessary. (*Ibid.*)

Discipline

Section 1390 requires that discipline be imposed at the least restrictive level which promotes the desired behavior and shall not include corporal punishment, group punishment, physical or psychological degradation.

Safety Rooms

Section 1359 requires the facility administrator, in cooperation with the responsible physician, to develop and implement written policies and procedures governing the use of “safety rooms.” Regulations required that the safety room be used to hold only those youth who present an immediate danger to themselves or others, who exhibit behavior, which results in the destruction of property, or reveals the intent to cause self-inflicted physical harm. (Cal. Code Regs., tit. 15, § 1359.) A safety room is prohibited from being used for punishment or discipline, or as a substitute for treatment. (*Ibid.*) Section 1359 prohibits the placement of a youth in the safety room from being used before other less restrictive options have been attempted and exhausted, unless attempting those options poses a threat to the safety or security of any youth or staff,

prohibits the use of a safety room for the purposes of punishment, coercion, convenience, or retaliation by staff, and prohibits the use of a safety room to the extent that it compromises the mental and physical health of the youth.

Similar to the statutory limits regarding the use of room confinement, a youth may only be held in the safety room for up to four hours. (Cal. Code Regs., tit., 15 § 1359.) After the youth has been held in the safety room for a period of four hours, staff is required to return the youth to general population, consult with mental health or medical staff, and develop an individualized plan that includes the goals and objectives to be met in order to reintegrate the youth to general population. (*Ibid.*) If confinement in the safety room must be extended beyond four hours, staff is required develop an individualized plan and the goals and objectives to be met in order to integrate the youth to general population. (*Ibid.*)

4. Ongoing Problems in Los Angeles County Juvenile Halls

Attorney General Investigation

In October 2018, the Attorney General’s Office began an investigation to determine whether Los Angeles County complied with state and federal laws with respect to conditions of confinement for their youth in their care at two juvenile hall facilities, Barry J. Nidorf and Central Juvenile Halls. Its Complaint for Injunctive and Other Equitable Relief (Complaint), filed in January 2021, alleged that the County of Los Angeles had unlawfully placed youth in segregation as punishment or discipline without due process of law, failed to provide youth in room confinement basic needs such as clean facilities, mental health and medical care, education, phone calls, and visitation, failed to properly document use of room confinement, among other violations. (See Complaint in State of California, et. al. v. Los Angeles County, et. al., Los Angeles Superior Court Case No. 21STCV01309, filed on Jan. 1, 2021, at p. 44, ¶ 190 available at <<https://oag.ca.gov/sites/default/files/LACPD%20-%20Complaint%20-%20file-stamped.pdf>>.)

During the course of its investigation, the AG found that Los Angeles County “endangered youth safety and provided insufficient protection from harm,” and “failed to provide a home-like environment for youth by subjecting them to conditions of confinement that must be reserved for adult penal institutions and depriving youth of their basic needs.” (*Id.*, at p. 4, ¶¶ 7, 8.) Notably, the AG found that Los Angeles County “has used room confinement improperly for punishment in violation of California law, including with respect to youth with disabilities.” (Complaint, at p. 4, ¶ 9.) According to the AG, youth in the Los Angeles County juvenile halls have been subjected to multiple days of room confinement and denied access to education and programming. (*Id.*, at p. 32, ¶ 124.) Some youth were also unlawfully denied access to leave their cells except to eat or shower, others were only permitted to leave their cells for school, eating, and showering. (*Id.*, at p. 33, ¶ 129.)

In addition, the AG found that legally required documentation was not accurate and failed to include critical information including when medical or mental health staff were consulted, the reasons for room confinement that went beyond four hours and any necessary approvals to do so, and whether or when the youth was given a hearing before long-term confinement. (*Id.*, at p. 33, ¶ 130.) Logs for March through May 2019 did not reflect any youth receiving programming while in room confinement, and records indicated a significant number of confined youth had developmental disabilities or were experiencing mental health needs. (*Id.*, at p. 33-34, ¶¶ 131, 133.)

Shortly after the Complaint was filed, Los Angeles County reached a settlement agreement with the AG's office to improve conditions at its juvenile facilities. (Attorney General Becerra, *Los Angeles County Enter into Groundbreaking Settlements to Protect the Rights of Youth in the Juvenile Justice System* (Jan. 13, 2021) <<https://oag.ca.gov/news/press-releases/attorney-general-becerra-los-angeles-county-enter-groundbreaking-settlements>>.)

BSCC Investigation

In February 2021, an investigation by the BSCC determined that the Los Angeles County Probation Department had not complied with some policies under Title 15, including those regarding juvenile room confinement. (September 16, 2021 Board Meeting Minutes, BSCC, p. 2 <<https://www.bscc.ca.gov/wp-content/uploads/Special-Order-of-Business-WIC-209d-Suitability-Determination-FINAL.pdf>>.) BSCC staff reviewed instances of room confinement and determined that the documentation lacked clarity for placing the youth in a locked room at the actual time of placement and did not indicate compliance with regulations. (Special Order of Business—Supplemental Report, BSCC at pp.18-19 (Sept. 16, 2021) <<https://www.bscc.ca.gov/wp-content/uploads/Supplemental-Report-WIC-209d-Suitability-Determination-Supplemental-Report-Final-9-15-21.pdf>>.)

In September 2021, as part of the follow up inspection process, BSCC staff had conversations with youth who reported that, at times, youth were being placed in their locked rooms for long periods of time after fights, during visiting, before and during showers, at shift change, and to split the group to minimize the possibility of unit disturbance and incidents. (Special Order of Business—Supplemental Report, BSCC (Nov.18, 2021), pp. 19-20 <<https://www.bscc.ca.gov/wp-content/uploads/Supplemental-Report-to-Board-Suitability-of-LA-County-Juvenile-Facilities-FINAL-11-17-21.pdf>>.) These placements were not documented as “room confinement” by Los Angeles County Probation, which is required by law. (*Ibid.*) With respect to the above-referenced placements, Los Angeles County Probation asserted that these incidents were not documented because they did not constitute “room confinement” because the placement was either brief or was “necessary for required institutional operations.” (*Ibid.*) After reviewing video and speaking with facility staff and youth, BSCC staff determined that many of these placements could not be reasonably characterized as brief or necessary for required institutional operations. (*Ibid.*) Accordingly, BSCC staff recommended further defining the terms “brief periods” and “required institutional operations” in its own regulations. (*Ibid.*)

Noncompliance with existing statutes and regulations has persisted. During a February 2022 site visit and investigation, BSCC staff identified at least one minor who was placed in room confinement without access to programming, exercise, and recreation outside of the room. (Notice of Noncompliance at the Los Angeles County Probation Department Central Juvenile Hall: Welfare and Institutions Code section 209, BSCC (Feb. 8, 2022) <<https://www.bscc.ca.gov/wp-content/uploads/2022.2.08-LA-CJH-Notice-of-Non-Compliance-s.pdf>>.)

This bill redefines the exception to room confinement in juvenile facilities for “brief periods” to a brief period lasting *no more than two hours* when necessary for institutional operations, and explicitly requires that that minors and wards subject to room confinement are provided reasonable access to toilets at all hours, including during normal sleeping hours.